

# INTEGRATING A GENDER PERSPECTIVE INTO HUMAN RIGHTS INVESTIGATIONS

## Guidance and Practice



Preparation

Investigation

Analysis

Reporting

Presentation



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER



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**UNITED NATIONS**  
**HUMAN RIGHTS**  
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# Contents

Abbreviations and acronyms .....	6
Key terminology .....	7
Introduction .....	10
<b>I. Preparation .....</b>	<b>14</b>
A. Selection of the team .....	14
B. Planning the investigation .....	16
C. Understanding the context and developing an investigation plan.....	19
D. Training/briefing the team on gender integration .....	22
E. Checklist.....	23
<b>II. Investigation and information-gathering .....</b>	<b>24</b>
A. Information-gathering and sources of information .....	24
B. Collecting sex- and age-disaggregated data .....	26
C. Overcoming challenges during information-gathering .....	26
D. Investigating gender-based violence, including sexual violence .....	30
E. Organizing information .....	35
F. Checklist .....	36
<b>III. Analysis of information .....</b>	<b>38</b>
A. Discrimination and violence in a continuum: how pre-existing gender-based discrimination can expose women, girls and LGBTI persons to specific violations .....	38
B. Gendered impacts of violations or abuses.....	43
C. The connection between gender-based violence and other human rights violations or abuses...	46
D. Intersecting forms of discrimination .....	48
E. Checklist.....	49
<b>IV. Report writing .....</b>	<b>50</b>
A. Integrating gender throughout the report .....	50
B. Using gender-sensitive language .....	52
C. Prioritizing gender-specific violations and concerns within the report .....	53
D. Drafting recommendations.....	53
E. Checklist.....	55
<b>V. Presentation of the report and sharing gender-related findings.....</b>	<b>56</b>
<b>VI. Concluding remarks.....</b>	<b>58</b>
<b>List of reports .....</b>	<b>59</b>

## Abbreviations and acronyms

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>COIs</b>	Commissions of inquiry
<b>IDP</b>	Internally displaced person
<b>FFMs</b>	Fact-finding missions
<b>GBV</b>	Gender-based violence
<b>HIV</b>	Human immunodeficiency virus
<b>HRC</b>	Human Rights Council
<b>LGBTI</b>	Lesbian, gay, bisexual, transgender and intersex
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>SGBV</b>	Sexual and gender-based violence



## Key terminology

**Gender** refers to the socially constructed identities, attributes and roles of persons in relation to their sex and the social and cultural meanings attached to biological differences based on sex. The meaning of such socially constructed identities, attributes and roles varies across societies, communities and groups and over time. This often results in hierarchical relationships between women and men and an unequal distribution of power and rights, favouring men and disadvantaging women and affecting all members of society. The social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors.

**Gender analysis** is a key tool to help recognize, understand and make visible the gendered nature of human rights violations, including their specific and differential impact on women, men and others, as well as human rights violations based on gender that specifically target lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. It can help to identify differences in the enjoyment of all human rights and fundamental freedoms in all spheres of life. It also seeks to analyse power relations within the larger sociocultural, economic, political and environmental contexts to understand the root causes of discrimination and inequality. Gender analysis is an integral part of a human-rights-based approach,<sup>1</sup> allowing one to see the many ways that gender affects human rights. As a starting point for gender integration, it can propose measures that will close the gender gap between international human rights standards and the everyday human rights situation on the ground.

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<sup>1</sup> A human-rights-based approach integrates international human rights standards and the principles of participation, accountability and non-discrimination into all development programming. For further information, see *HRBA Portal*, and OHCHR, *Frequently Asked Questions on the Right to Development*, Fact Sheet No. 37 (New York and Geneva, 2016), p. 10.

**Gender-based discrimination** includes any distinction, exclusion or restriction due to gender that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms. Direct discrimination occurs when a difference in treatment relies directly on distinctions based exclusively on characteristics of an individual related to their sex and gender, which cannot be justified on objective and reasonable grounds (e.g. laws excluding women from serving as judges). Indirect discrimination occurs when a law, policy, programme or practice appears to be neutral but has a disproportionately negative effect on women or men when implemented (e.g. pension schemes that exclude, for instance, part-time workers, most of whom are women).

**Gender-based violence** (GBV) is violence directed towards, or disproportionately affecting, someone because of their gender or sex. Such violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.<sup>2</sup> Examples include sexual violence, trafficking, domestic violence, battery, dowry-related violence, coerced or forced use of contraceptives, violence against LGBTI persons, femicide, female infanticide, harmful practices and certain forms of slavery and servitude.

**Gender equality** refers to the equal rights, responsibilities and opportunities for people of all sexes and gender identities. Equality does not mean that women and men will become the same but that their rights, responsibilities and opportunities will not depend on whether they are born male, female or outside those binary categories. Substantive or de facto equality, as required by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), does not mean guaranteeing women treatment that is identical to that of men in all circumstances. Rather, it recognizes that non-

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<sup>2</sup> CEDAW general recommendation No. 35 (2017).

identical treatment of women and men, based on biological as well as socially and culturally constructed differences between women and men, is required in certain circumstances to achieve equality of opportunities and results. This is sometimes referred to as affirmative action or temporary measures.<sup>3</sup>

**Gender identity** refers to a person's deeply felt and experienced sense of their own gender, which may or may not correspond with the sex they were assigned at birth. It includes the personal sense of the body and other expressions of gender, such as clothing, speech and mannerisms. Everyone has a gender identity. "Transgender" or "trans" are umbrella terms for people with a wide range of gender identities and expressions who do not identify with the sex they were assigned at birth. A transgender person may identify with different gender identities, including man, woman, transman and transwoman, and with specific terms, including non-binary identities such as hijra, fa'afafine and two-spirit, among other terms. "Cisgender" is a term for people who identify with the sex that they were assigned at birth.<sup>4</sup>

**Gender integration** (also commonly referred to as "gender mainstreaming") is the process of assessing the implications for women, men and other gender identities of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is often misunderstood as only referring to the monitoring of women's human rights or GBV. The integration of a gender perspective in human rights investigations implies an analysis of the gender dimensions of the violations that includes the perspectives of everyone, including LGBTI persons, and the impacts of the human rights violations on all individuals and populations, which can differ depending on their sex and

gender. Focus is often placed on making sure that women's perspectives are reflected, as women and girls are generally among the more marginalized populations and their perspectives can be made invisible by non-gendered analysis. Gender integration is part of the global strategy of the United Nations for promoting gender equality.

**Gender sensitivity.** Being gender sensitive or acting in a gender-sensitive manner means using respectful and non-discriminatory language and taking into account the different situations, needs and attributes of women, men and others, in order to make sure behaviours, mindsets or programmes respect the human rights of all persons.

**Gender stereotype** is a generalized view or preconception about attributes or characteristics of what ought to be possessed by women and men, or the roles that are or should be performed by men and women.<sup>5</sup>

**Harmful practices** are persistent behaviours, attitudes and practices that are based on discrimination and are typically justified by invoking sociocultural or religious customs, values, practices and traditions. Essentially, they tend to disproportionately affect women and girls and are often manifested in forms of GBV. Harmful practices impair the recognition, enjoyment and exercise of human rights and are mostly perpetrated by private individuals.<sup>6</sup>

**Sex** is the sum of biological and physiological characteristics that typically define men and women, such as reproductive organs, hormonal make-up, chromosomal patterns, hair-growth patterns, distribution of muscle and fat, body shape and skeletal structure. This publication will often refer to women, men and others to include

<sup>3</sup> CEDAW general recommendation No. 28 (2010), para 22.

<sup>4</sup> See United Nations/OHCHR, *Living Free and Equal: What States Are Doing To Tackle Violence And Discrimination Against Lesbian, Gay, Bisexual, Transgender And Intersex People* (New York, 2016).

<sup>5</sup> See OHCHR, "Gender stereotypes/stereotyping".

<sup>6</sup> CEDAW Committee and CRC, Joint general recommendation No. 31 of CEDAW and general comment No. 18 of the CRC (2014).



binary and non-binary self-identifications of sexual identity.

**Sex-disaggregated data** are data that are collected and presented separately on women and girls, men and boys. Such data contribute by reflecting a more accurate picture of the roles, real situations and general conditions of women and men in every aspect of society, for instance literacy rates, education levels, business ownership, employment, wages, dependents, house and land ownership, loans, credit and debts. It is also important for data to be presented on the human rights situation of other individuals who do not use or feel represented in binary sex/gender categories.

**Sexual orientation** refers to a person's physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation. Heterosexual people tend to be attracted to individuals who are of a different sex from themselves. Gay men and lesbian women tend to be attracted to individuals who are of the same sex as themselves. Bisexual people may be attracted to individuals who are of the same or a different sex from themselves. There are also other terms and concepts related to sexual orientation not included in this list.<sup>7</sup>

**Sexual violence** is a form of gender-based violence. It encompasses acts of a sexual nature perpetrated against one or more persons or that cause such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.<sup>8</sup> Forms of sexual violence include rape, attempted rape, sexual mutilation, forced sterilization, forced abortion, forced prostitution, trafficking for the purpose of sexual exploitation, child pornography, child prostitution, sexual slavery, forced marriage, forced pregnancy, forced nudity and forced virginity testing. The term "sexual and gender-based violence" (SGBV) is used to emphasize the element of sexual violence while acknowledging that it is also part of the broader term "gender-based violence" (GBV, see above).

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<sup>7</sup> See also United Nations/OHCHR, *Living Free and Equal* (2016).

<sup>8</sup> See International Criminal Court, *Elements of Crimes*, art. 7 (1) (g)-6.

# Introduction

## BACKGROUND

Human rights monitoring and human rights investigations are a central aspect of the response provided by the United Nations to human rights violations, identifying the causes of human rights concerns and developing possible solutions, promoting accountability and deterring further human rights violations.

Monitoring and investigative functions are a core aspect of the protection mandate of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and a function of most human rights field presences established under its mandate or as part of peace operations, mandated by the Security Council and overseen, managed and supported by OHCHR.<sup>9</sup> These functions are also carried out by international commissions of inquiry (Cols), fact-finding missions (FFMs) or other investigative bodies.<sup>10</sup> Cols/FFMs are temporary bodies of a non-judicial nature, established by intergovernmental bodies,<sup>11</sup> the Secretary-General or the United Nations High Commissioner for Human Rights, with the task to investigate allegations of violations of international human rights law (IHRL), international humanitarian law (IHL) or international criminal law, as relevant, and make recommendations for corrective actions based on their factual and legal findings. United Nations human rights mechanisms, such as certain treaty bodies, also carry out inquiries as part of their mandate as set out in international human rights treaties, if they have received reliable information containing well-founded indications of serious or systematic violations.<sup>12</sup>

Regional human rights mechanisms of the African Commission on Human and Peoples' Rights or the Inter-American Commission on Human Rights also perform monitoring and investigative functions. Some non-governmental organizations or civil society also carry out investigations, monitor and report on human rights violations and concerns.

OHCHR is mandated to contribute to the realization of all human rights for all people, which includes non-discrimination on the basis of sex as a fundamental principle of human rights law. On that basis, in 2011, OHCHR adopted its Gender Equality Policy, which provides internal guidance on how the Office aims to integrate a gender perspective and women's human rights throughout policy formulation, programme development and activity implementation, including in the context of its monitoring and investigative work.<sup>13</sup> Moreover, Cols/FFMs are

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<sup>9</sup> OHCHR, *Manual on Human Rights Monitoring* (2011), *Foreword*, p. iii.

<sup>10</sup> This publication will refer to Cols/FFMs as a generic term. It should be noted, however, that some investigative bodies are not necessarily strictly identified by these terms, while their mandates have generally similar investigative functions.

<sup>11</sup> These can include the Human Rights Council, the Security Council and the General Assembly.

<sup>12</sup> See OHCHR, "*Human rights bodies – complaints procedures*".

<sup>13</sup> OHCHR, *Gender Equality Policy* (2011).

also requested to devote specific attention to gender issues and the gendered impacts of violations in their reports and recommendations, as provided in Human Rights Council (HRC) resolution 23/25. Cols/FFMs have increasingly sought to integrate a gender perspective into their work. In particular, since 2009, Sexual and Gender-Based Violence (SGBV) Investigators/Gender Advisers have been part of the secretariats of Cols/FFMs, with the express function to support the integration of a gender perspective into their work.<sup>14</sup> In 2011, the Secretary-General committed to “ensuring that all commissions of inquiry and related investigative bodies established by the United Nations ... will have dedicated gender expertise and access to specific sexual violence investigative capacity, drawing on the support of UN-Women” (S/2011/598, para. 69).

## WHY INTEGRATE A GENDER PERSPECTIVE?

Awareness of specific norms related to gender-based discrimination and adequate gender analysis can prevent the overlooking of critical human rights violations or abuses. For example, a lack of knowledge of standards applying to women in detention or male victims of sexual violence could result in overlooking specific obligations of duty bearers<sup>15</sup> and making invisible violations suffered by segments of society.

A gender analysis can strengthen investigations and reports by contributing to an analysis that addresses the adverse human rights impact that certain human rights situations or crises can have on different people, including women, men, girls and boys, as well as LGBTI persons or persons with non-binary gender identities. This gender-sensitive analysis can therefore contribute to the better tailoring of recommendations and the response to violations.

Analysis of pre-existing gender-based discrimination can contribute to making visible ensuing violations or the compounded impact of violations on certain populations. For example, discrimination in matters related to nationality can disproportionately result in statelessness for women and their children, and discriminatory access to natural or income-generating resources can compound the effects of displacement and armed hostilities on women and girls.

A lack of gender analysis often results in the experiences of women or LGBTI persons being made invisible or reduced to instances of victimization, perpetuating a narrative that downplays the agency of women and girls or LGBTI persons.

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<sup>14</sup> Since 2009, OHCHR has been working closely with UN Women to provide most Cols/FFMs with at least one SGBV Investigator or Gender Adviser, deployed from a joint Justice Rapid Response-UN Women experts' roster.

<sup>15</sup> The term “duty bearer” refers to those actors who have international human rights obligations or have the responsibility to respect, protect, and fulfil human rights. It usually refers to state actors, but non-state actors can also be considered duty bearers.

## WHAT IS THIS PUBLICATION ABOUT?

This publication provides practical guidance on the integration of a gender perspective throughout the work of investigative bodies or entities, from the planning phase to the investigations and to writing the report and presenting its findings. It specifically aims to strengthen the content of human rights reports in order to accurately depict the different experiences of women, men, girls and boys. While it points to ways to analyse SGBV, it does not intend to provide detailed guidance on applicable methodologies to investigate SGBV.<sup>16</sup>

## WHO IS THE TARGET AUDIENCE?

This publication is mainly intended to be used by United Nations Human Rights Officers, especially those performing investigative functions, including with Cols/FFMs. It can also be more generally relevant as a reference source for the human rights monitoring, analysis and reporting performed by OHCHR field presences or as part of peace operations mandated by the Security Council and overseen, managed and supported by OHCHR. States parties, regional mechanisms, national human rights institutions, national commissions of inquiry, civil society organizations and others could also benefit from the guidance provided in this publication on how to integrate a gender perspective into monitoring and investigating human rights violations and abuses.

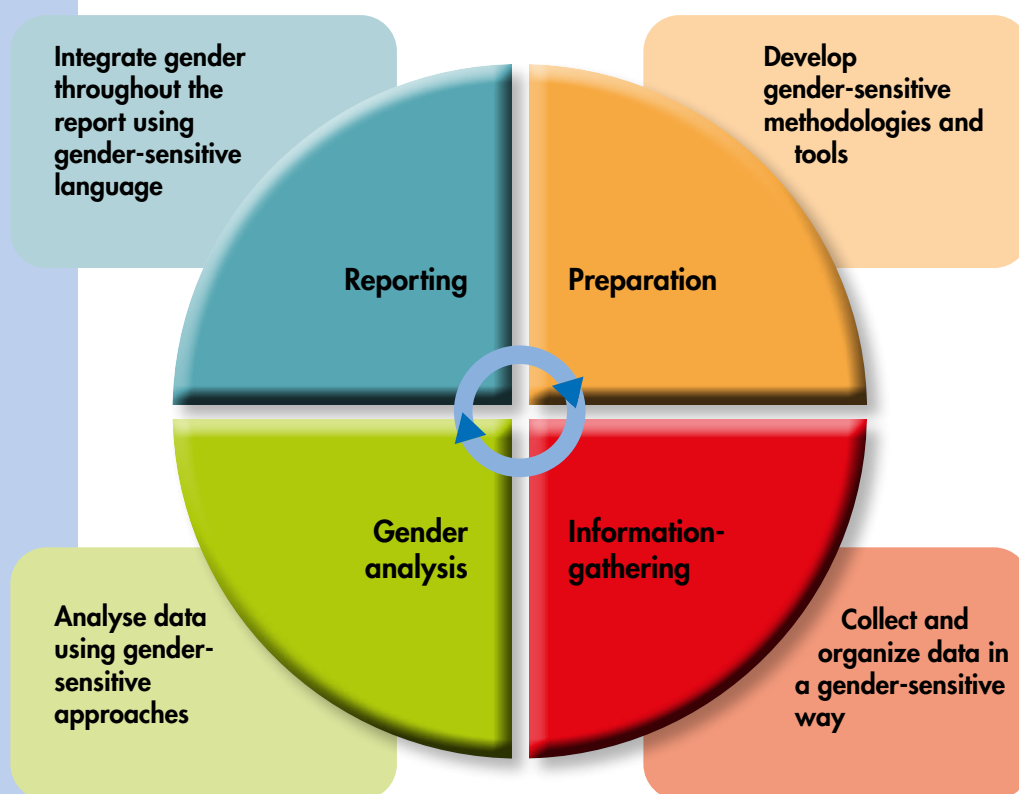
## HOW TO USE THIS PUBLICATION

This publication follows the structure of the four main phases of human rights investigations: preparation, investigation, documentation and information-gathering; evaluation and analysis of information; and report writing. Finally, it includes a chapter on the presentation of the report. Boxes are included containing examples drawn from United Nations reports, especially Cols/FFMs, practical tools for gender analysis and particular issues to pay attention to. Each chapter concludes with a checklist to facilitate gender integration throughout the various stages of investigation. It is not intended that suggestions provided in this publication are exhaustive or applicable to all situations.

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<sup>16</sup> For guidance on international criminal investigations on sexual violence, see Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, 2<sup>nd</sup> ed. (London, United Kingdom, Foreign and Commonwealth Office, 2017). For guidance on sexual and gender-based crimes, see International Criminal Court, Office of the Prosecutor, “Policy paper on sexual and gender-based crimes” (The Hague, 2014). For guidance on the investigation of sexual violence against men and boys, see Institute for International Criminal Investigations, *Guidelines for Investigating Conflict-related Sexual and Gender-based Violence against Men and Boys* (The Hague, 2016). See also OHCHR, *Guidance Note on documentation, analysis and reporting of sexual and gender-based violence* (forthcoming).

This publication is complementary to existing OHCHR guidance on human rights monitoring and investigations. It should be read in conjunction with Chapter 15 (Integrating Gender into Human Rights Monitoring)<sup>17</sup> and Chapter 28 (Monitoring and Protecting the Human Rights of Women)<sup>18</sup> of the *Manual on Human Rights Monitoring*. These chapters elaborate on the integration of gender and women’s human rights into the monitoring cycle. This publication should also be read in conjunction with the guidance and practice developed by OHCHR for CoIs and FFM’s.<sup>19</sup>



<sup>17</sup> OHCHR (2011), Chapter 15, “Integrating Gender into Human Rights Monitoring”.

<sup>18</sup> OHCHR (2011), Chapter 28, “Monitoring and Protecting the Human Rights of Women”.

<sup>19</sup> OHCHR, *Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice* (New York and Geneva, 2015).

# I Preparation



The following sections will consider some key gender-related aspects during the critical phase of preparation for an investigation, ranging from the selection of a gender-balanced team to appropriate strategies to enhance the team's knowledge about gender integration.

## **A** SELECTION OF THE TEAM

The selection of Commissioners and Experts of Cols/FFMs is normally the prerogative of the President of the Human Rights Council, the United Nations High Commissioner for Human Rights or the Secretary-General, who have, since 2009, systematically appointed at least one female Commissioner/Expert to each Col/FFM. United Nations Human Rights Officers, including those constituting the secretariats of Cols and FFMs, are selected by the United Nations High Commissioner for Human Rights or the Secretary-General.

Gender balance and expertise on gender issues are among the several criteria taken into account in the selection of Human Rights Officers. In addition to selected staff, teams deployed to the field for investigative missions should include, to the extent possible, both female and male Human Rights Officers. Moreover, when deciding on who will conduct which interview(s), it is important to understand the possibly different impact on the victim, source or witness if they are interviewed by a man or a woman. Gender dynamics and cultural sensitivities should be taken into account when making such decisions.

When SGBV Investigators/Gender Advisers (hereinafter referred to as Gender Advisers) are part of the team to support monitoring or investigative efforts, their timely integration into the team is key to their effectively contributing to the integration of a gender perspective from the beginning of the preparation phase, and they



## Functions of Gender Advisers

The functions of the Gender Advisers in Col/FFMs include at least the following:

- Contribute to the analysis of the mandate of the Col/FFM from a gender perspective, and provide inputs to the investigation plan, including gender-sensitive investigation methods, ensuring that all the team is aware of the gender dimensions of human rights violations at stake, as well as identifying specific issues that affect different groups of women and girls and suggesting methodologies for their investigation;
- Research and collect information pertaining to women's human rights and gender issues directly related to the mandate of the Col/FFM, including SGBV and violations of women's civil, economic, political and social and cultural rights;
- Conduct and/or assist in conducting interviews and information-gathering activities, to adequately document and analyse SGBV against women and girls, and against men and boys, and violence against women in both private and public settings, among others, and ensure that necessary measures are implemented for the protection of victims, witness and sources, including victims and survivors of SGBV;
- Provide advice and build the capacity of the Col/FFM to ensure that all members of the Secretariat are aware of how best to research, investigate, analyse and report on human rights violations against women and girls, including SGBV, as well as SGBV against men and boys, and understand the gendered impacts of international human rights and humanitarian law violations;
- Provide advice and build the capacity of the Col/FFM to ensure that security arrangements are gender sensitive and take into account cultural and contextual gender issues;
- Support the establishment of referral pathways for victims, especially for SGBV victims, ensuring that the team is aware of those pathways and adequately refers victims to service providers. Follow-up and monitoring of access to and quality of services would allow the referral pathway(s) to be revised accordingly;
- Contribute to the drafting of the investigation outcome document and final report, incorporating, and supporting the incorporation of, a gender perspective and gender-sensitive language. This includes the drafting of specific sections (e.g. on SGBV or women's human rights) and ensuring that the analysis of facts to establish human rights violations reflects the gender dimension.



should remain for the duration of the monitoring and investigation work to continue performing their functions throughout the process.

Working with male and female interpreters is also critical, to ensure that victims, sources and witnesses will feel sufficiently comfortable to disclose information to a male or female interpreter. Interpreters can play a key role in the information-gathering phase and supporting the development of a gender-sensitive glossary of terminology that would help during interviews.

The need to brief interpreters on substantive aspects, including in relation to GBV, should not be overlooked. It is also important to assess whether the interpreter can handle sensitive/disturbing information and/or is comfortable explaining/translating all details conveyed by the victim to the investigator, to avoid the reproduction of gender bias.<sup>20</sup>

<sup>20</sup> See also OHCHR (2011), Chapter 11, "Interviewing", pp. 11 and 22, and Chapter 28, "Monitoring and Protecting the Human Rights of Women".

## B PLANNING THE INVESTIGATION

A number of key issues should be addressed at the beginning of the investigation:

### INTERPRETATION OF THE MANDATE AND SCOPE OF THE INVESTIGATIONS

First, investigative teams and CoIs/FFMs should discuss how to integrate gender into their work in the light of their mandate and mission. Mandates are usually broad and defined from a geographical and/or temporal point of view, and/or based on subject matter and/or actors. Mandates should be interpreted as extending to all relevant gender-related concerns, including GBV. This follows from the general principle of non-discrimination in international law and, for HRC mandates, from the declaration made in HRC resolution 23/25, para 17.

This is the time to dispel concerns about limitations potentially posed to a gender-sensitive investigation by the wording of the mandate and interpretation of the scope of the human rights analysis or the time and geographical limits of the investigation. A gender analysis should be integrated into the interpretation of the mandate, and strategies in this regard should be discussed at the outset.

All human rights investigations suffer constraints, challenges and limitations, including in relation to limited time and resources and protection issues for victims, witness, sources and staff, as well as the challenges presented by the cultural and political settings. For many of these reasons, investigation teams might not be able to cover all areas of concern that could fit within the mandate and must therefore perform a prioritization exercise. A gender-sensitive interpretation of the mandate and definition of the scope of the investigation is critical at this early stage to ensure that the outcome of investigations fully considers the gender

dimension of the human rights situation and violations and does not exclude key concerns that particularly or differently affect persons of a particular sex or gender.

Narrowing the scope of the investigations to one particular type of human rights violation can render invisible the experience of women and girls, in particular in contexts where particular rights seem to be mainly exercised by men. For example, in some contexts it is mostly men who exercise their right to freedom of expression and assembly and they may be more likely to participate in demonstrations. As a result, if investigations focus only on documentation of the repression of peaceful demonstrations, this prioritization would render invisible the role played by women and their experiences in this context. This could include other forms of women's expression or participation, the consequences that the repression or detention of their male relatives may have on them or the gender dimension of the human rights concerns that may have triggered the demonstrations in the first place.

Similarly, geographic prioritization can also have an impact on gender analysis. For example, women and girls, who are often the majority of displaced populations, experience differently and disproportionately the consequences of the displacement on the enjoyment of their human rights. This can include lack of access to sexual and reproductive health and rights, food or education, and violence in internally displaced person (IDP) and/or refugee settings, including sexual violence. In such contexts, limiting the scope of investigations to the events that have taken place in one particular area or country may fail to document the situation of those living in such settings. This runs the risk of keeping invisible the differentiated consequences on women and girls of the human rights violations that have caused their displacement. When possible, mandates that appear to be geographically or thematically

limited should be interpreted broadly to allow the documentation of all violations, including the resulting consequences on women, girls, men and boys specifically.

### Example

As to its geographic scope, the Commission interpreted its mandate to include alleged violations perpetrated out of the territory of the concerned State. This included serious human rights violations, such as the trafficking into forced marriage and forced prostitution experienced by refugee women, that involved extraterritorial actions and/or were a direct result and consequence of the human rights violations that occurred in the territory of the State. (A/HRC/25/CRP.1, para 19)

## APPLICABLE LEGAL FRAMEWORK

Investigations should refer to all applicable legal standards, including the three bodies of international law – international human rights law, international humanitarian law, where the legal threshold for armed conflict has been met, and international criminal law, when applicable to the situation under investigation.<sup>21</sup> As established practice, Cols/FFMs interpret whether their mandate requires them to investigate only violations of international human rights law or violations of both international

<sup>21</sup> Other bodies of law, such as international refugee law, may also be applicable. In its general recommendation No. 30 (2013) (para. 19), CEDAW stresses that “In all crisis situations, whether non-international or international armed conflict, public emergencies, foreign occupation or other situations of concern such as political strife, women’s rights are guaranteed by an international law regime that consists of complementary protections under the Convention and international humanitarian, refugee and criminal law.” See also International Legal Protection of Human Rights in Armed Conflict (United Nations publication, Sales No. E.11.XIV.3), p. 8.

human rights law and international humanitarian law. They may also be expressly requested to refer to international criminal law when they establish the existence of international crimes perpetrated in the situation under investigation.

The work of the investigation teams should encompass both the general and the specific protection of women and girls under the applicable international legal regimes. The protections to which women and girls are entitled are included, inter alia, in the core human rights treaties, and specifically in the CEDAW,<sup>22</sup> as well as in provisions under international humanitarian law.<sup>23</sup> Non-discrimination and equality between women and men are central principles of human rights law. Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibit discrimination on the basis of sex and guarantee women and men equality in the enjoyment of the rights covered by the Covenants.

International frameworks such as Security Council resolutions particularly related to women, peace and security<sup>24</sup> and recommendations of the international human rights mechanisms (HRC, special procedures and treaty bodies) and regional mechanisms, where applicable, should also be considered

<sup>22</sup> See Women’s Rights are Human Rights (United Nations publication, Sales No. E.14.XIV.5), in particular Chapter V, sections D and F, and UN Women, “Global norms and standards: Ending violence against women”. See also footnotes in this section (I, B).

<sup>23</sup> For more information, see International Committee of the Red Cross, *General and Specific Protection of Women under International Humanitarian Law*. For an introduction to the sources of international humanitarian law and references see, for example, International Legal Protection of Human Rights in Armed Conflict (United Nations publication, Sales No. E.11.XIV.3).

<sup>24</sup> See Security Council resolutions 1325 (2000), 1327 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015) and 2331 (2016). For selected Security Council resolutions and documents relevant to women, peace and security, see [www.securitycouncilreport.org/un-documents/women-peace-and-security](http://www.securitycouncilreport.org/un-documents/women-peace-and-security).

when carrying out the investigation and analysing data. Investigation teams need also to be aware of specific standards, rules and guidelines applying to women and girls, such as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

### SETTING THE BASIS FOR A GENDER-SENSITIVE METHODOLOGY

Investigators should aim at corroborating any given piece of information by obtaining concurring information from two other independent and reliable sources.<sup>25</sup> However, this may not always be possible, particularly when stigma is attached to certain violations and victims risk being marginalized by their communities for exposing what they have suffered, or when certain forms of violations are committed out of sight of eye witnesses. In such cases, applying a unified method of verification for all violations without a gender-sensitive approach may disregard or consider as unverified certain forms of violations. Some Cols/FFMs have taken into consideration differentiated factors, including gender, when defining verification requirements, especially for cases of torture and sexual violence. Thus, the verification of a case may occur where a coherent, consistent testimony from a single primary source (e.g. the victim or a witness) corresponds to a pattern of similar cases.

<sup>25</sup> For more information, see OHCHR, *Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law* (2015), pp. 59-60.

### Example

Some Cols/FFMs explain in detail the methods and standards used as verification (A/HRC/25/CRP.1, paras. 63-78), some providing specific analysis on how standards of proof were met in relation to sexual violence. “For instance, for acts of sexual violence or torture, it can be very difficult to corroborate the allegations of the victims with another independent source, especially if the victim had no access to medical assistance. In such cases, corroboration could be obtained by evaluating the details of the victim’s statement, its credibility, trying to determine if it is consistent with information available in the public domain and establishing if the acts reveal patterns that correspond to other similar cases.” [non-official translation] (A/HRC/36/CRP.1/Rev.1, para. 28)<sup>26</sup>

Available guidance and good practices in interviewing and establishing trust with victims, including victims of GBV, both male and female, should be considered and discussed at the outset of the investigation. While all possible efforts should be deployed to obtain relevant information, “do no harm” principles and the avoidance of retraumatization should also receive due attention.<sup>27</sup> Where the interviews are likely to be with traumatized persons, investigation teams should discuss how best to assess and manage trauma in interviews. An important part of this includes the identification of *viable* referral pathways and ensuring that all Human Rights Officers conducting interviews

<sup>26</sup> See also Navanethem Pillay, United Nations High Commissioner for Human Rights, “Human Rights Investigations and their Methodology”, lecture given at the Graduate Institute, Geneva, 24 February 2010; Emily Kenney, “Developing a gender methodology for U.N. commissions of inquiry”, *International Law and Politics*, vol. 46, No. 2 (2013), p. 631.

<sup>27</sup> OHCHR (2011), Chapter 15.

have this information to hand before being deployed to the field to conduct interviews with potential victims.

The methodology should be adapted to the circumstances of the investigation and include strategies on how to overcome possible challenges in the information-gathering phase.<sup>28</sup> The team might, for example, consider whether it is advisable to directly approach victims, witnesses or sources, whether female or male, or whether they might suffer reprisals or stigmatization within their community as a result of their interaction with the investigators. Possible solutions should be explored, such as contacting trusted local organizations, including organizations working with women or on women's rights or gender issues, which would be willing to assist in facilitating access to victims, witnesses and sources.

A gender analysis is also critical in selecting the persons to be interviewed, including victims, witnesses and other sources such as service providers, government representatives and representatives of civil society organizations; the selection of interviewees should include, as far as possible, equal representation by sex and gender.

The media and outreach strategy developed at the outset of the investigation should integrate gender into its content and presentation. This can be achieved by, for example, ensuring that female and male members of the investigation teams, including Commissioners or Experts, are equally visible and active in their interaction with media and also in high-level talks, that gender-related findings are integrated into the presentations among the core priorities and findings and that not only the female Commissioner(s)/Expert(s) or staff address questions related to gender issues. Public

dissemination of information on the mandate of an investigative body, including explanation of the scope of the investigations, would also contribute to clarifying from the outset the type of gender considerations that the investigation will include.

## C

### UNDERSTANDING THE CONTEXT AND DEVELOPING AN INVESTIGATION PLAN

As set out in the OHCHR *Manual on Human Rights Monitoring*, in order to establish an appropriately sensitive methodology, investigation teams will need to have a functioning understanding of how legal, civil, economic, political, cultural and social issues have impacts on various populations in the country, region or situation where the alleged human rights violations have occurred.<sup>29</sup> Attention should be paid to the pre-existing human rights landscape of marginalized people in the society, including women and girls and those marginalized on the basis of sexual orientation, religious, ethnic, racial and gender identities, class, national origin, disability and other status, such as refugees or IDPs, as well as human rights defenders and journalists. Investigation teams should bear in mind that identities can and often do intersect, with the consequence that some individuals and populations are particularly and differentially targeted for violence.

An effective gender-sensitive methodology and investigation plan will take into account the need to assess how – in the country or situation concerned – legal, civil, economic, political, cultural and social issues affect women and men differently, resulting in different experiences. As discussed in more detail in section III of this publication, gender-based discrimination and

<sup>28</sup> See, for example, A/HRC/32/CRP.1, paras 19-30. See also below, section II C, Overcoming challenges during information-gathering.

<sup>29</sup> OHCHR (2011), Chapter 7, "Gathering Contextual Information".

violence should be seen within the larger context of any pre-existing inequalities.

### Example

“Transactional sex and prostitution are also rife ... as women voluntarily submit to men for food, money, travel or to avoid a fine or other punishment. These activities, driven by the need for survival by vulnerable persons, are the consequence of the structural problem of food shortage and gender discrimination. Such structural problems are also major contributing factors to the high levels of trafficking in women and girls.” (A/HRC/25/CRP.1, para. 320)

In order to understand the context, the team might choose to:

- Map the human rights situation of women, men and others in the country by surveying open source materials and gain an overview of the legal, economic, political, cultural and social challenges women, men and others face. Pay attention to intersecting forms of discrimination based on ethnicity, national origin, sexual orientation, gender identity, class and other status. Map the relevant actors/perpetrators and their roles, power/influence, needs and interests;
- Map any explicit or implicit, direct or indirect discriminatory norms or provisions contained in the national constitution or legislative and customary laws and policies. Protection gaps, as well as legal, social and economic barriers to access to justice, in fact have a direct bearing on women and men’s

experiences to be analysed.<sup>30</sup> The findings of the mapping should inform legal analysis of the legal framework and ensure that deficiencies in the laws are discussed in the report and its recommendations;

- Identify protection gaps that might create obstacles for the reporting of some violations. For instance, the fear of prosecution due to the criminalization of homosexuality or same-sex sexual relationships or the criminalization of adultery might inhibit the reporting of rape by both male and female victims and survivors;
- Consult recommendations and country reports by relevant human rights mechanisms such as: the Committee on the Elimination of Discrimination against Women (CEDAW Committee);<sup>31</sup> the Committee on Economic, Social and Cultural Rights (CESCR); the Committee against Torture (CAT); the Human Rights Committee; the Committee on the Rights of the Child (CRC); the special procedures, for example, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the human rights of internally displaced persons; and the Working Group on the issue of discrimination against women in law and in practice (WGDAW); as well as information provided by the OHCHR’s field presences, Gender Advisers, United Nations agencies and entities, non-governmental organizations and other sources.

<sup>30</sup> For additional material on women’s access to justice and SGBV in the context of transitional justice, see A/HRC/27/21 and CEDAW general recommendation No. 33 (2015).

<sup>31</sup> Country reports to the CEDAW Committee are available at [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx).





## Practical Tool No. 1

### Gender-mapping exercise (example)

#### Alleged violations:

Indiscriminate attacks on civilians and civilian objects

#### Time:

3 August –  
15 September 2017

#### Location:

Area X

#### Perpetrator:

Unknown

#### Gendered impacts

- Disproportionate number of women and children killed/injured during attacks on residential buildings due to existing gender roles whereby women are mainly restricted to the domestic sphere and bear the responsibility of looking after the children and elders
- Displacement → crowded conditions, lack of order → vulnerability to sexual violence
- Lack of domestic fuels → increased responsibilities and psychological pressure on women during conflict/displacement in view of typically female chores that are affected (cooking, etc.)
- Unequal access to humanitarian assistance; distribution of food and services to the “heads of households”
- Restrictions on registration/access to property and other assets (including “widows’ salaries”) → financial dependency
- Vulnerability to harmful practices and other violations → forced by poverty to marry for financial security

#### International humanitarian law applicable framework

- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War
- Additional Protocol I to the Geneva Conventions, article 51 (4) on indiscriminate attacks

#### International human rights law applicable framework

- CEDAW, article 1 on discrimination against women, articles 11 and 13 on the right to work
- CEDAW, article 15 on the right of women to equality with men before the law and the legal capacity identical to that of men; articles 15 (2) and 16 (1) (h) in relation to equal rights to administer property
- CEDAW, article 15 (4) on the right to freedom of movement
- CEDAW, article 16 (1) (a) and (b) on the right to freely choose a spouse and to enter into marriage only with their free and full consent
- International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 2 and 12 on the right to food and health care

## D

**TRAINING/BRIEFING THE TEAM ON GENDER INTEGRATION**

All members of an investigation team have a responsibility to integrate a gender perspective into their work. It is therefore imperative to train all staff members to detect gender concerns and impacts within their area of expertise and assigned functions. If the team is trained in applying gender-sensitive practices and documentation techniques for the collection of information and data, the quality of the gender analysis will be enhanced and the chance that the investigators disregard valuable information decreased. The training should include how to identify the gendered impact of human rights violations, how to interview victims and survivors of GBV, including sexual violence, and how to write a report that mainstreams gender.

All Human Rights Officers with investigative functions should be in the position and trained to undertake interviews with GBV victims and survivors, even when the team counts on the support of a Gender Advisor. This is particularly important as it may not always be possible to know in advance whether GBV, including sexual violence, may come up in the context of interviews. Training sessions should also include

a session on the referral of victims or witnesses to service providers, especially of medical and psychosocial services, as part of the team's protection functions.

Gender Advisers supporting investigative bodies have developed different methods to enhance the capacities of the entire investigation team, including Commissioners/Experts, staff and interpreters. Gender Advisers, when part of the team, might develop summaries/briefs on different aspects of gender integration, including key gender concepts (such as indirect discrimination and GBV), a situational overview for women and men in the country/region under investigation and an introduction to gender analysis.

Another method to promote gender integration into the work of the team is to organize training sessions. Some CoIs/FFMs have developed thematic briefings or training sessions for the staff of the secretariat, with the support of the OHCHR Women's Human Rights and Gender Section.<sup>32</sup> Training sessions can combine theoretical information about GBV with practical exercises. These aim at identifying violations of women's rights and gendered impacts in fictional scenarios while applying the relevant international framework.

<sup>32</sup> OHCHR, "Women's human rights and gender equality".



### CHECKLIST FOR THE PREPARATION PHASE

- ☑ Ensure gender balance and gender expertise in the selection of the members of the team, including, when relevant, Commissioners/Experts and Human Rights Officers performing investigative functions, legal analysis and reporting. Make certain that Gender Advisers join the investigation from the outset.
- ☑ Map the differentiated human rights situation of women and girls, men and boys in the country and develop an overview of the legal, economic, political, cultural and social challenges. Pay attention to intersecting forms of discrimination based on ethnicity, national origin, sexual orientation, gender identity, class and other status. Map the relevant actors/perpetrators and their roles, power/influence, needs and interests. Identify protection gaps and any risks or barriers to reporting specific violations, which can be different for women, men, children or LGBTI persons.
- ☑ When developing a methodology, account for possible obstacles that might surface when investigating violations of women's human rights or violations against LGBTI persons and their gendered impacts and discuss within the team possible strategies to overcome these.
- ☑ Ensure that gender is integrated into the investigation plan and field missions. Depending on the circumstances, a separate investigation plan for gender integration can be developed. Identify the key gender-related issues to be investigated and the methodology for gathering such information.
- ☑ Identify potential sources of information, such as victims or witnesses, human rights activists, and civil society groups and networks working with women and on women's human rights, LGBTI and/or gender issues, as well as national human rights institutions, field workers and service providers, community leaders and authorities, who could provide relevant information with a gender-sensitive approach. Identify potential intermediaries who could assist in the identification of victims, witnesses and sources. Establish contact at an early stage in order to enable them to organize and assist in the most efficient manner possible.
- ☑ Include a gender analysis in the prioritization exercise and identify gender integration priorities for the investigation. Inputs from local women's human rights groups and other relevant partners can also be valuable in terms of identifying priorities.
- ☑ Prepare briefing notes with the objective of assisting all members of the team to successfully integrate gender throughout the investigation, highlighting possible issues to be investigated. Parts of the briefing notes and the background material mentioned above could be used in the report at a later stage.
- ☑ Ensure that a training session on gender-sensitive investigation is provided to all staff members, including on identification and documentation of the gendered impact of human rights violations, on conducting interviews with victims and survivors of GBV, the use of referral pathways and gender integration in reporting.



## Investigation and information-gathering

During the documentation and investigation phase, information should be gathered from a wide range of sources to allow for a comprehensive analysis of violations or abuses and possible gendered impacts suffered by women, men and others and to reveal pre-existing forms of violence and discrimination. In addition to considering various sources of information that will be useful to an investigation, this chapter will provide guidance on collecting and organizing gender-related data, as well as strategies to overcome some of the challenges that may present themselves during the information-gathering process.

### A

#### INFORMATION-GATHERING AND SOURCES OF INFORMATION

Depending on the mandate and the context, main sources of information may include

primary sources (such as victims, witnesses, Human Rights Officers' direct observations at the locations where events occurred and declarations by alleged perpetrators) and secondary sources (such as second-hand testimonies, the media, information provided by United Nations entities, humanitarian actors, civil society actors, medical or forensic reports and certificates). Information comes in various forms: oral testimony, documents, video material, photographs, personal observations and satellite images.<sup>33</sup> In particular, Human Rights Officers should map out the most relevant sources of information that would contribute to a gender analysis. These may include the following, for instance:

- Victims and witnesses of any practices of GBV and other gender-related violations. In addition, Human Rights Officers should be mindful to ask the relevant question in all interviews (not only of GBV victims

<sup>33</sup> See OHCHR, *Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law* (2015), p. 42.

or witnesses and not only of women), allowing them to gather information on the differentiated impact of the human rights violations on women, girls, men and boys.

- Experts and local or international women's and human rights representatives and activists in the field, including representatives of civil society organizations working with and on the human rights of women and girls and LGBTI persons, as well as service providers, such as medical care providers targeting women and girls, midwives, humanitarian and human rights personnel and social workers, including those working with women and girls, among others. Besides giving their own account of the events under investigation, these actors might be willing to assist the investigation by providing relevant documentation, reports and information gathered on the ground and serve as intermediaries to contact other victims, witnesses or sources.
- Official reports and statistics, reports and data produced by United Nations entities, humanitarian actors and civil society and medical and forensic reports and videos may all be valuable sources of information for the documentation of human rights violations, including violations of women's human rights, and GBV, and of the differentiated impact of human rights violations on women, girls, men and boys. While many of these documents may have been gathered in the preparation phase, additional documentation may surface or become known through interaction with different actors at the local level when gender-sensitive questions are asked.
- State officials and members of armed groups, or former officials and former members of armed groups, if possible and where security risks can be adequately mitigated, might also be willing to be interviewed.

## "Do no harm"

Respecting the "do no harm" principle requires a proper assessment of gender dynamics and cultural norms that may result in victims and witnesses being exposed to further harm, including retraumatization or stigma, violence and marginalization at the hands of alleged perpetrators or the victims' families and communities. At the same time, it is important not to make assumptions about a victim's needs or condition based on stereotypical views. For example, it should not be assumed that all victims of sexual violence would find the process of recounting their experience traumatizing. If well conducted, such a process could in fact be healing and empowering.

Prior to arranging an interview with a victim or witness, especially a person potentially traumatized or in a situation of vulnerability, Human Rights Officers should consider, for example:

- Whether the victim may experience reprisals, marginalization, stigma or violence, including at the hands of their family or community, for contacting and/or informing the investigation team;
- What facts are critical to the case and whether the victim or witness can provide the necessary information;
- Whether the victim or witness has already given a statement, including to another United Nations agency/agencies, in order to assess whether it is necessary to ask her/him to recount traumatic events once again;
- Whether the investigator knows how to respond appropriately to the victim or witness if she/he becomes distressed, and whether the investigator is knowledgeable about referrals to counselling and other services.<sup>34</sup>



<sup>34</sup> For more information, see OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law* (2015), p. 33 ff.

## B

**COLLECTING SEX- AND AGE-DISAGGREGATED DATA**

While respecting the principles of self-identification,<sup>35</sup> investigators should seek to obtain disaggregated data. At a minimum, information on violations (e.g. extrajudicial killings, enforced disappearances, torture, deprivation of liberty, GBV, etc.) should be broken down by sex and age and, where possible, on the basis of other status. This is key to determining the gender specificities of human rights violations as well as to giving an accurate account of the particular experience of women, girls, men and boys and to identifying potentially discriminatory practices or targeting (e.g. based on ethnicity, religion, political affiliation, sexual orientation, disability, etc.). Disaggregated data is not always available and, where it is not, this fact should be reflected in the report. In such instances, data in the OHCHR database or estimates provided by local human rights organizations might be used as indicators, provided they are properly referenced in the report.

In order to document the differentiated impact of violations or of the human rights situation on women and girls, investigation teams should also seek and gather information and disaggregated data, including by year, to allow comparative analysis of the possible impact or exacerbation of pre-existing forms of violence and discrimination.

**Example**

The importance of the collection of sex-disaggregated data was illustrated during the Ebola disease outbreak, which showed

<sup>35</sup> The principle of self-identification prescribes that a person belonging to a minority group or groups has the right to self-identify, or not to self-identify, as being of such a group. For more information, see Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 3.

a disproportionate effect on women and children, with up to 75 per cent of reported cases affecting women. A gender analysis shed light on the causes of transmission: women and girls are more often in contact with bodily fluids of infected persons as they are usually caretakers for ill family members and more likely to be front-line health workers (nurses, midwives) or health facility service staff (e.g. cleaners, laundry workers, etc.). Women are often traditionally tasked with preparing dead bodies for burial, exposing them to direct contact with disease. Also, women can contract the disease through sexual intercourse with men who have recovered from Ebola, as the virus stays in the semen for up to seven weeks after recovery. In this regard, it is important to consider that women are often not in a position to refuse sex – including within marriage – and to negotiate the use of condoms. It is not that Ebola targets women; however, a simple analysis uncovers the effect that gender roles can have on the rights of women, starting with the basic right to life.

## C

**OVERCOMING CHALLENGES DURING INFORMATION-GATHERING**

Collecting information on violations or abuses directed towards, or disproportionately affecting, someone because of their gender or sex is particularly challenging. The ongoing discrimination that victims may face, and the impunity that typically prevails, requires that investigators and interpreters win the trust of victims. In most societies, it is often not socially acceptable to discuss the systematic oppression of women and LGBTI persons or certain prevalent violations, such as sexual violence. Consequently, besides the absence of reliable information, the investigation team may struggle to identify where such violations have occurred and to find victims or witnesses who are willing to provide testimony.



To overcome these challenges, investigation teams should conduct a thorough mapping exercise on potential sources that can provide gender-specific information. It is often critical to rely on intermediaries who could help to identify those persons, including victims, or organizations that may be good sources of information. Intermediaries can also play a critical role in reaching out to victims and making the first contact with them to assess their disposition to being interviewed. Investigation teams should be proactive in reaching out to different types of sources and intermediaries, making sure the selection of sources and intermediaries is conducive to gathering information on women's human rights and gender issues. It is important to remember, when identifying sources, not to rely too heavily on entities or service providers that target only one segment of the population. For example, psychosocial services that only target women and girls may not be good sources of information on trauma suffered by men or boys.

In some contexts, and for a variety of reasons (e.g. security, remoteness, trauma or stigma), it may be very difficult or impossible, or inadvisable, to interview certain victims or witnesses. While the documentation of human rights violations will often require interviews with surviving victims and direct witnesses, care should be taken to contemplate and reach out to other available sources of information. This could also contribute to preventing the conduct of unnecessary interviews, which is particularly important when dealing with traumatized persons.

Women and girls are often disproportionately assigned domestic tasks, including cooking, gathering water and wood and caring for children and elders, which often restrains their availability to participate in meetings and their freedom of movement. Additional obstacles may prevent women and girls' participation and their ability or disposition to meet and be interviewed. Investigation teams should be aware of the situation of women and girls in the particular

context and take the necessary measures to maximize their participation by mitigating any obstacles. This may include organizing interviews according to special schedules that facilitate the participation of women and girls, arranging alternative childcare, considering the possibility of conducting interviews remotely through secure communication methods, or receiving written testimonies, when relevant. Outreach initiatives should also be gender sensitive to ensure that women and girls are made aware of them, in a timely manner, and of the possibility of their attending and that facilities will be provided to enable them to give their testimony.

Experience has revealed that, in communities with a strong patriarchal culture, women and girls often perceive themselves and their experiences as secondary to others'. As a result, their testimonies often focus primarily on the experience of their male relatives and/or children. Human Rights Officers conducting interviews should be aware of this and must ensure that follow-up questions focus on the women's experience. Dedicating "special days" for women may also contribute to facilitating their participation and sharing information on their own experience.

Some CoIs/FFMs have organized public hearings to increase the outreach and visibility of their work, supplement information that requires further verification, identify new sources of information and/or bring forward or prioritize certain topics, such as violations of women's rights. Gender Advisers can play an essential role in preparing victims and witnesses to speak in public hearings and in sensitizing Commissioners, Experts and Human Rights Officers on how best to ask questions on gender issues. Consideration should be given to whether public hearings could expose victims to further stigmatization or violence.

Yet another challenge is that patriarchal and gender-based discrimination might be so ingrained that even the investigators themselves fail to recognize human rights concerns. For

example, if maternal mortality increases, the team might consider this a sad fact of life rather than a direct consequence of a conflict or a possible matter of discrimination – where duty bearers may have failed to provide access to required reproductive health-care services, for example. As a consequence, investigations and documentation of violations might fail to include all the relevant elements needed for a gender analysis. Hence the importance of training the investigation team to undertake gender-sensitive information-gathering and analysis.

### Example

“The Commission found that in general, women were more reluctant to come forward and speak for fear of their own safety as well as that of their families, lack of time, perceived inability to access interview locations, perceived lack of interest in their experiences and a general hesitation to disclose these ... By far, however, the biggest challenge to interview women was the fear for the safety of their families as they believed that their conduct was being clandestinely monitored by [the] authorities and were terrified for any person to know they had spoken with the Commission.” (A/HRC/29/CRP.1, para. 46)

“The Commission understood that in the cultural setting in which women perceived themselves and their experiences to be of lesser significance to men, it would be important to have special days for women. The Commission noted that towards the end of the Commission’s investigation phase, as trust and confidence in the Commission’s work had grown, many more women indicated their willingness to be interviewed, but due to the Commission’s compressed timeline this was no longer possible.” (A/HRC/29/CRP.1, para. 47)

Gathering information about human rights violations against LGBTI persons might also entail specific challenges. United Nations and other stakeholders have documented how persons have been specifically targeted by state and non-state actors in conflict settings as a result of their actual or perceived sexual orientation or gender identity, including for being seen to transgress entrenched gender norms. Still, LGBTI persons in contexts of conflict are often neglected and violations against them underreported. Efforts should be made to actively seek information on the situation of LGBTI persons, including through organizations that protect their rights, while ensuring confidentiality and the safety of the persons concerned. Limited information currently exists on the situation of intersex persons in conflict settings, who may also face additional risks of vulnerabilities.<sup>36</sup>

### Example

“Men were tortured and raped on the grounds of their sexual orientation at government checkpoints ... In 2011, six homosexual men were beaten viciously with electric cables by security agents and threatened with rape. (A/HRC/25/65, para. 67)

In October 2013, a 26-year-old man was detained on the grounds of his sexual orientation. He was beaten and hung by his arms from a ceiling ...” (A/HRC/25/65, para. 70)

<sup>36</sup> See Nishin Nathwani, *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees* (Geneva, United Nations High Commissioner for Refugees, 2015).



## Practical Tool No. 2

### Information-gathering exercise

While the appropriate methods used to gather information vary depending on the circumstances, there are common challenges that arise concerning identifying/contacting victims or witnesses, obtaining statements and planning field missions. The team might need to consider different approaches in order to ensure that women's and men's voices are equally represented. The team might choose to map out possible challenges and develop appropriate strategies in order to gather information, as indicated in the examples below.

#### Challenges

- Building trust and rapport with the communities and potential victims or witnesses, given inadequate time on the ground
- Obtaining statements from female or male victims and witnesses, given their fear of retaliation, security concerns, perceived lack of time due to household responsibilities and/or lack of self-agency
- Identifying and contacting potential victims or witnesses, given existing gender dynamics

#### Suggested strategies

- ⇒ Establish contact with intermediaries as early as possible and communicate the wish to speak with women as well as men (intermediaries might include social workers, activists, hospital staff and journalists, for example)
- ⇒ Gather inputs from local organizations and civil society networks, including women's groups or others who are familiar with gender concerns, cultural aspects and protection issues that might be relevant for the information-gathering process
- ⇒ Establish contact with victims or witnesses through local organizations and networks, including women's human rights organizations and LGBTI networks that have established trust within the communities
- ⇒ Consider alternatives to in-person interviews with victims, such as interviews with service providers, written statements or, when relevant, telephone interviews or other secure online channels
- ⇒ Adapt the team's information-gathering strategies if necessary. In some instances, it might be appropriate, for example, to first speak with a male member of a woman's family, or religious leaders, in order to explain the reasons for the interview

#### Previously successful strategies for consideration

Introduce a "women-only day" during the field mission – a day specifically dedicated to women to enable them to express their views and to better document their experiences (A/HRC/29/CRP.1, para. 47)

Contact women's networks and groups to request their assistance in collecting written testimonies from a range of women (A/HRC/29/CRP.4, para. 12)

Promote women's participation by facilitating their ability to bring their children with them. Other women to be interviewed could look after the children while their mothers were being interviewed (A/HRC/36/CRP.1/Rev.1)

Adjust the methodology to accommodate female victims and witnesses' needs and constraints, for example by carrying out telephone interviews with women after working hours (A/HRC/29/CRP.1, para. 47)

## D

## INVESTIGATING GENDER-BASED VIOLENCE, INCLUDING SEXUAL VIOLENCE

GBV, including sexual violence, is a human rights violation (e.g. violation of the right to physical integrity, the right to be free from torture, cruel, inhuman or degrading treatment or punishment, the right to be free from slavery, the right to equality and non-discrimination) that can be committed by a variety of perpetrators, including state and non-state actors and/or individuals. Moreover, the State is in breach of its human rights obligations if it fails to respond appropriately to GBV, that is, to act with due diligence to prevent GBV, bring perpetrators to justice and ensure that victims have access to an adequate and effective remedy and full redress, including for acts or omissions by state and non-state actors and/or individuals.

Additionally, it is now recognized that, in certain circumstances, non-state actors (e.g. armed groups) can also be bound by international human rights law and can assume, voluntarily or not, obligations to respect, protect and fulfil human rights.<sup>37</sup> GBV takes multiple forms and includes sexual violence, trafficking, domestic violence, battery, forced marriage, dowry-related violence, coerced or forced use of contraceptives, femicide, female infanticide, harmful practices and certain forms of slavery and servitude. In addition to being human rights violations, and crimes in many national legal systems, depending on the context in which these acts take place, such acts can also be in violation of international humanitarian law and/or a war crime, a crime against humanity or a constitutive act of genocide under international criminal law.

Even during peacetime, there may be deficiencies in a State's responses to GBV. These can be further aggravated in conflict and post-conflict situations, when GBV tends to increase, at the hands of state officials, armed groups and private individuals, due to the general breakdown of law and order, generalized climate of violence and increased availability of arms, among other factors.

Investigation teams should gather and analyse information on the broad spectrum of States' obligations concerning GBV, in particular in conflict and post-conflict situations.<sup>38</sup> This includes:

- Examining whether there is a gender-responsive, human-rights-compliant legal and policy framework in place;
- Identifying any early warning systems in place to identify potential, impending and/or ongoing violations;<sup>39</sup>
- Identifying measures the State has taken to prevent or combat all forms of GBV by state and non-state actors, such as training for national troops, border police, immigration officials and national humanitarian actors on how to identify cases of GBV and protect individuals from GBV;
- Identifying measures that have been taken to prevent, investigate and punish all forms of GVB, including sexual violence, at the hands of state officials (e.g. army, police), armed groups, etc., including the issuing of orders, codes of conduct, reporting mechanisms and implementation of disciplinary measures.

<sup>37</sup> *International Legal Protection of Human Rights in Armed Conflict* (United Nations publication, Sales No. E.11.XIV.3), pp. 23-27. See also CEDAW, general recommendation No. 35 (2017).

<sup>38</sup> CEDAW general recommendation No. 30 (2013) provides more detailed guidance on what those obligations are. CEDAW general recommendation No. 35 (2017) contains extensive guidance in this regard.

<sup>39</sup> For examples of early-warning indicators of conflict-related sexual violence, see the "*Matrix: early-warning indicators of conflict-related sexual violence*", elaborated by the UN Action Network Against Sexual Violence in Armed Conflict (2011).

- Review leaders' public statements to determine whether they comply with the obligation to condemn all kinds of GBV and do not use a derogatory narrative that perpetuates harmful gender stereotypes that condone – or even incite – violence;
- Analysing whether reported crimes and allegations of violations and abuses are investigated, prosecuted and punished and that reparations were effectively granted and provided to victims;
- Examining whether there is impunity for GBV and trying to understand the causes of impunity. This may include a lack of will, a lack of resources and human capacity in the judicial system to handle claims, a lack of independence of the judiciary or protection of perpetrators by state institutions, a lack of understanding of duty bearers, and the prevalence of gender stereotypes and patriarchal societal norms that minimize the importance of crimes against women and GBV more generally. Underreporting may also be explained by victims' fear and reluctance to engage with the justice system, a lack of protection measures or psychosocial support, accessibility barriers or limited awareness of available complaint mechanisms;
- Considering whether the officials involved in the administration of justice, including prosecutors, lawyers, police and judges, understand the sensitivities surrounding violations of women's rights or of LGBTI persons' rights. For example, gender-sensitive practices (e.g. the use of female police officers, choice of the time and location of interview so as not to expose women, etc.) should be employed in investigations of GBV. Legal aid should be available and accessible to victims and survivors of GBV, particularly those belonging to disadvantaged populations. Victims and witnesses should be able to access safeguards in order to ensure that they are protected when engaging with judicial mechanisms, including protective orders, injunctions, guarantees of confidentiality, etc. They should also have access to adequate information and comprehensive medical treatment, mental health care and psychosocial support;
- Examining whether there have been any efforts to raise awareness among victims about their right to reparations.<sup>40</sup> A State could, for example, establish programmes for reparations and assistance to victims and survivors of GBV. Where reparations programme were established, consider whether the State adequately and widely consulted with victims when establishing it;<sup>41</sup>
- Investigating whether there are alternative dispute resolution processes that discriminate against women, established by law or by local customary practices. For example, informal justice systems such as traditional, customary, tribal or religious systems might not comply with international human rights standards, and may prove to be an obstacle to ensuring protection and redress for victims and survivors of GBV. Additionally, they might face pressure from their families and community to accept an out-of-court settlement with the perpetrator.

<sup>40</sup> For more extensive guidance on redress and reparations, see CEDAW general recommendation No. 33 (2015).

<sup>41</sup> For policy and operational guidance on engaging/supporting reparations initiatives, see Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence, June 2014.



### Practical Tool No. 3

## Things to consider prior to/during interviews

- **Reflect on any possible prejudices and gender stereotypes, including one's own biases that might interfere with or influence the investigative process and may increase the chance of overlooking important information. A common wrongful assumption, for example, is that men or elderly women cannot be victims of sexual violence. Another common assumption is that victims of sexual violence have suffered only this form of violence and may not be regarded as good sources of information for other types of violations.**
- **Provide victims and witnesses with the choice of speaking to a female or male investigator and/or interpreter; avoid making assumptions regarding the victim's preference.**
- **Allow the story to unfold naturally and for the victim to use his/her own words. At a later stage of the interview, order the interview chronologically and return to points that need clarification. Be aware that, if the person being interviewed experienced trauma, it may affect their ability to coherently or fully recount an event. If it is appropriate, ask about GBV.**
- **Remain attentive to the narrative of the victim or witness. Other violations/experiences might be relevant in addition to those that initially were the basis for the interview. For example, it might emerge during an interview that a source is a victim and survivor of GBV.**
- **Be aware of challenges in an interview context, such as vague language and expressions used to indicate GBV, including sexual violence, as well as cultural taboos that may affect both the victim or witness and the interpreter. Be sensitive to any information provided during the interview that indicates this, such as gaps in the narrative and euphemisms used by the victim or witness when referring to the experience.**

Particular challenges present themselves when gathering information on sexual violence. The consequences of sexual violence have long-lasting effects on victims and survivors, who often continue to suffer from the medical, physical and psychological trauma and socioeconomic consequences of the violence. In addition, stigma associated with sexual violence creates further barriers to victims and survivors talking about the harm they experienced, preventing them from receiving medical and psychological support and claiming their rights, including redress. Moreover, while women and girls continue to be primarily affected by sexual

violence, due to structural power imbalances in society, it has become increasingly visible that sexual violence also affects men and boys, with gender stereotypes also underlying their victimization. In communities with a strong patriarchal culture, women's and girls' experiences might be considered less significant and sexual violence against male victims may be highly stigmatized. Many victims who choose not to come forward do so in fear of shame, stigma, retaliation against themselves and their families, loss of privacy and/or possible prosecution, for instance where adultery or same-sex relations are criminalized.



## Stigma

Stigma associated with sexual violence is socially and culturally constructed around dominance and inequality. It leads to the creation, condoning or compounding of social exclusion for those who are (or are perceived to be) victims and survivors of sexual violence. Stigma involves penalizing or placing blame on individuals, groups or communities for bringing shame or “transgressing” the standards of their community or society.<sup>42</sup>



### Example

Several Cols/FFMs reported the difficulties for victims and survivors to come forward, including the stigma associated with sexual violence, as well as the fear of reprisals and of being rejected by their partners, families or communities, which can prevail regardless of the sex of the victim.

Expressions of support of the community, including of religious leaders, who have embraced the women and girls who have survived sexual violence, sending a message that they belong to and are accepted in the community, were critical for victims and survivors to start a process of healing and to accept talking and disclosing what they have endured. “Whereas previously they may have been ostracised, this religious-backed embrace of female survivors has provided a space in which those who were unmarried

at the time of capture can still marry within the faith, and in which those who are married are more likely to be accepted and supported by their husbands and extended families.”

(A/HRC/32/CRP.2, para. 79)

Another Col reported on the particular stigma associated with sexual violence against men and boys and how the violations affected their lives and their physical and mental health, and inhibited them in reporting the violations they suffered, including to medical services, which often were not adapted to men and boys. “The victims met by the Commission had rarely had access to medical care in exile, due to lack of information, fear of stigmatization or because the free services provided to refugees were not adapted, especially to male victims of sexual violence. These later often felt ashamed to seek and obtain the medical care that is generally provided to women. A man testified that his trauma resulting from the rape was such that he could not talk about it to the doctor who was treating him for another medical condition.” [non-official translation] (A/HRC/36/CRP.1/Rev.1, para. 498)

Male victims and survivors of sexual violence are often reluctant to step forward due to the risk of stigmatization and prosecution. Domestic legislation might lack legal protections for male victims of sexual violence due to gendered definitions of rape that exclude male rape. The legislation may criminalize sexual intercourse between men without distinguishing

<sup>42</sup> See also *Principles for Global Action: Preventing and Addressing Stigma Associated with Conflict-related Sexual Violence* (United Kingdom, Foreign and Commonwealth Office and Preventing Sexual Violence Initiative, 2017).

between consensual and non-consensual sexual intercourse. In addition, the types of sexual violence to which men are exposed differ from those against women and girls, and are often underreported and less commonly acknowledged.<sup>43</sup> Investigators may not be familiar with the stigma around sexual violence against men and boys and, consequently, they might overlook the gathering of such information from sources and/or fail to look for possible signals that sexual violence has taken place. For instance, sexual violence can be used as a form of torture and ill-treatment in detention, but may not be reported as such by victims and survivors themselves and by the investigators. Hence the importance of training and of following specific methodologies (e.g. on interview techniques, selection of intermediaries/sources and information-gathering) conducive to the disclosure of this information by victims and survivors and the adequate documentation of these forms of violence.<sup>44</sup>

<sup>43</sup> See Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, [Report of the Workshop on Sexual Violence Against Men and Boys in Conflict Situations](#), New York, 25-26 July 2013. Sexual violence against men and boys includes, inter alia: rape, such as anal or oral rape, including gang rape, forcing men to rape others or rape using objects; different forms of torture and ill-treatment on the genitalia; forcing a victim to assist the rape of or other form of sexual violence against their family members; sexual slavery; and forced circumcision, castration and other forms of genital mutilation.

<sup>44</sup> See specific section in OHCHR, [Guidance Note on documentation, analysis and reporting of sexual and gender-based violence](#) (forthcoming).

## Investigating sexual violence against men and boys

The Institute for International Criminal Investigations (IICI) has published a set of guidelines for investigating conflict-related SGBV against men and boys.<sup>45</sup> The guidelines are designed to assist criminal justice and human rights investigators, reporters and monitors to fully and properly monitor, document and investigate sexual violence against men and boys that may amount to war crimes, crimes against humanity and genocide and other egregious violations of international humanitarian, criminal and human rights law.

The guidelines cover the following fields:

- Overall legal, institutional, strategic, policy, procedural and financial frameworks
- Investigation policy
- Composition and functioning of relevant institutions
- Capacity-building and awareness-raising of staff
- Investigation: preliminary research
- Investigation planning: general considerations
- In-depth predeployment analysis
- Information- and evidence-collection plan
- Investigation team
- Threat and risk assessments, and referral avenues
- Interview strategies, techniques and practices
- Medical and forensic investigations
- Capture, storage, management, confidentiality and disclosure of information and evidence
- Analysis of information and evidence
- Reporting, public relations, awareness-raising and advocacy
- Budgeting
- Redress



<sup>45</sup> Institute for International Criminal Investigations, [Guidelines for Investigating Conflict-related Sexual and Gender-based Violence Against Men and Boys](#) (The Hague, 2016).

## Example

“Several testimonies reported ... sexual torture used on male detainees. Men were routinely made to undress and remain naked. Several former detainees reported beatings of genitals, forced oral sex, electroshocks and cigarette burns to the anus in detention facilities ... Several of the detainees were repeatedly threatened that they would be raped in front of their family and that their wives and daughters would also be raped.”  
(A/HRC/S-17/2/Add.1, para. 66)

“The Mission was informed that some soldiers held at the military camp ... were apparently forced by the camp leaders to have sex with each other while their captors filmed the scene with amusement. The same soldiers stubbed cigarettes on different parts of their victims’ bodies.”  
(A/HRC/22/33, para. 51)

## E ORGANIZING INFORMATION

Investigation teams should keep records of their interviews and other documents and information in a database that allows for and helps the categorization of cases and searches, including by type of violation, such as gender-specific violation, as well as by sex and age. Databases that allow accounting for the gendered nature of violations under investigation improve the ability to undertake gender analysis and to do so efficiently. This is particularly important in the case of CoIs/FFMs, considering the usually

short time frames in which they operate and the need for tools that facilitate the revision of large amounts of interviews, information and data by all relevant members of the team, especially those in charge of gender and legal analysis and reporting. If the information is entered in the database correctly and diligently, for instance systematically including all relevant gender-sensitive aspects that arise from the interviews or information and using specific gender-sensitive categories to organize the information, this can provide the team with straightforward and timely access to information that is relevant to conducting a gender analysis and also to obtaining both an overview and a detailed narrative of the events. This may also facilitate the gathering of disaggregated data concerning each violation/incident/pattern, allowing for a clearer understanding of the nature and scope of the violations/abuses and their impact on women, girls, men or boys.

Database functionalities should be designed to facilitate a gender-sensitive analysis, including, for instance, gender-specific categories and tagging options, to enable the user to extract sex- and age-disaggregated data, use keyword searching and highlight gender-related events, patterns and incidents. All members of investigation teams should be trained in the use of the database, including how to enter and extract information with a gender perspective. Where Gender Advisors support the team, coordination with them is critical, as they can facilitate the revision of cases and follow-up to specific incidents, as well as the analysis, advising the other members of the team when gender-related concerns emerge, as these may not arise in the initial analysis and/or if the methodology has to be adapted to obtain the relevant information.

**F CHECKLIST****CHECKLIST FOR INVESTIGATION AND INFORMATION-GATHERING**

- ☑ Identify a wide range of potential sources of information, including victims and direct witnesses, as well as secondary sources or intermediaries, such as United Nations entities, civil society groups, experts and activists, paying particular attention to the gender diversity of the sample of sources selected. These should include – as far as possible – equal representation of men and women.
- ☑ Ensure the investigation coordinates and collaborates with relevant United Nations entities as well as international and local human rights, women’s rights and LGBTI persons’ rights organizations, networks and groups, human rights organizations representing victims, health-care providers and humanitarian actors, in order to obtain information on women’s human rights, including (but not only) on SGBV, and, as necessary, establish contact with victims and witnesses. Be particularly attentive to not overlooking intermediaries, sources (including victims and witnesses) and secondary sources who would be best placed to provide information on women’s human rights or gender-specific aspects of the violations and LGBTI persons’ rights, as well as on gender equality and women’s and girls’ status in the society.
- ☑ Identify the prevailing challenges that might prevent or inhibit women’s participation and their voices from being heard (as men’s voices generally tend to be overrepresented). Set specific strategies to address these challenges, to enable and facilitate the disclosure of information on the violations women may have suffered or on the differentiated impact that the particular events, conflict or crisis has/had on women and girls. Specific strategies may include organizing public hearings, including women-only days, and other measures that encourage women’s participation, such as adjusted schedules facilitating their interaction (e.g. after working/active hours), considering childcare options, suggesting the possibility of remote interviewing, etc. Particular attention should be paid in relation to outreach and dissemination of information in order to reach out to a wide variety of the targeted population, including women, LGBTI persons and other marginalized populations.
- ☑ Ensure that interviews are conducted in such a way that gender-specific questions are asked and can illustrate and inform on the differentiated impact of the human rights violations on women, girls, men and boys. Ensure that the information gathered also aims at documenting the violation of women and girls, beyond sexual violence, and documenting the differentiated impact of the violations on them.
- ☑ Take measures to ensure that all Human Rights Officers have the competencies and the skills to conduct investigations on GBV. Ensure that support/training is regularly provided to the team on how to do so and how best to record the interviews and gather documentation. Investigate different forms of GBV by state officials, non-state armed groups and other non-state actors. If relevant, address all prevalent forms of sexual violence, not only rape,



including, for example, trafficking, transactional sex (being forced to exchange sexual favours for money, shelter, food or goods in humanitarian or displacement settings) and harmful practices such as child and forced marriage. Pay particular attention to certain populations who are at higher risk of GBV during and after conflict, including IDPs, refugees, LGBTI persons, human rights defenders, females/males directly participating in the conflict and military personnel, persons deprived of liberty by state or non-state actors, persons with disabilities, especially women and girls with disabilities, female-headed households and indigenous women.

- ☑ Systematically collect disaggregated data on victims, witnesses and alleged perpetrators. This includes information on sex and age, as well as detailed information about caste, ethnicity, national religious or other minorities, and identities of victims and those believed to be responsible. This will be helpful in documenting whether a particular population has been the target of SGBV or other violations.
- ☑ Adjust the methodology and the database to allow the collection and analysis of disaggregated data, especially by sex and age, as well as by other criteria that could provide information on intersecting forms of discrimination. Ensure that the Human Rights Officers conducting the investigations are trained to organize and enter information into the database that is gender sensitive, taking into account relevant gender considerations and disaggregating data by all relevant parameters.
- ☑ Acknowledge the heightened or different risks of reprisals among women and girls and GBV victims. Conduct a risk assessment and develop strategies so that victims, witnesses and sources can report freely and safely about any violation of women's and girls' rights, including by GBV, and are given adequate time to do so. Pay particular attention to gender-sensitive security and protection measures for victims, witnesses and sources when applying OHCHR methodology, including recommended measures to preserve the confidentiality of their identities and to prevent reprisals against them.
- ☑ Be aware of the team members' own biases, prejudices and stereotypes that may lead to their overlooking important gender-sensitive information, for instance by not asking the relevant questions, affecting information-gathering and documentation. These biases may include the erroneous idea that victims of sexual violence will not have information to share about other types of violations.
- ☑ Investigations should gather information and document violations perpetrated by state and non-state actors, as well as on the fulfilment of the State's obligations to investigate, prosecute and sentence perpetrators and provide reparations to victims. When relevant, a gender-sensitive analysis should also apply to the measures taken in the context of transitional justice initiatives.



## Analysis of information

A gender analysis of the data and information gathered should include, at a minimum, analysis of: the various forms of gender-based discrimination and violence and of the exacerbation of pre-existing forms of gender-based discrimination, including of possible intersecting forms of discrimination; the differentiated impact of human rights violations on women, girls, men, boys and others; and the connection between GBV and other human rights violations or abuses.

A

### DISCRIMINATION AND VIOLENCE IN A CONTINUUM: HOW PRE-EXISTING GENDER-BASED DISCRIMINATION CAN EXPOSE WOMEN, GIRLS AND LGBTI PERSONS TO SPECIFIC VIOLATIONS

Pre-existing gender-based discrimination and gender inequalities can influence the economic, social, cultural, civil and political dimensions of women's and men's experiences of a conflict/crisis and the differentiated impact that human rights violations can have on women, girls, men and boys. The contextual information gathered in the preparation phase in order to understand the underlying causes and manifestations of discrimination against women and LGBTI persons will be instrumental in understanding and analysing the repercussions of these on the human rights violations to be documented and analysed in turn.



## Example

“Entrenched traditional patriarchal attitudes and violence against women ... persist. The state has imposed blatantly discriminatory restrictions on women in an attempt to maintain the gender stereotype of the pure and innocent ... woman. Sexual and gender-based violence against women is prevalent throughout all areas of society.” (A/HRC/25/CRP.1, para. 351)

“[The] society remains male dominated, with gender-based discrimination widespread. In addition to entrenched discriminatory norms within [the] culture and stereotypes on women’s role in family and society, the enforcement of laws itself displays discrimination.” (A/HRC/17/44, para. 33).

“[The] daily existence of women and girls is governed by clan and family dictates, duties and responsibilities as a wife, mother and daughter. A woman’s status in this patriarchal society is largely determined by marriage, the ‘bride wealth’ her family obtains upon her marriage and her ability to reproduce within that union. [...] Women are vulnerable when a husband dies. Inheritance and distribution of property is determined by the husband’s relatives and in many instances, especially where a woman does not have sons, she will not inherit from her deceased husband’s estate. [...] Women in polygamous unions face further difficulties when a husband dies, more so if they are from a different ethnic community to their husband and extended family. Not only do they run the risk of losing property and being disinherited, but also losing custody and/or access to their children should they choose to leave the husband’s family. [...] In cases involving rape, tradition and custom often dictate that the perpetrator, if known, marry the victim as compensation to the family or provide compensation if the victim is married. Traditional and cultural norms

place enormous value and importance on virginity and purity of women. Women and girls who are raped face stigmatisation once it becomes known.” (A/HRC/37/CRP.2, paras. 164-177)

CEDAW general recommendation No. 30 (2013) notes that “conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors.”<sup>46</sup> It also states that the barriers women face in accessing justice prior to a conflict are exacerbated during the conflict, and often persist during the post-conflict period.<sup>47</sup>

Experience has shown that this is particularly the case when States have neglected to take measures during peacetime to:

- Overcome power imbalances and inequalities based on gender roles and discrimination against women and girls;
- Ensure a conducive environment where women and girls have access and non-discriminatory exercise of their human rights, including in relation to employment, education, health (e.g. sexual and reproductive health and rights), access to land and natural resources and freedom of expression, association and assembly, and can freely develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices;
- Ensure accountability for violations of women’s human rights, including GBV.

<sup>46</sup> CEDAW general recommendation No. 30 (2013), para. 34. For further guidance, see Aisling Swaine and Catherine O’Rourke, Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council Resolutions on Women, Peace and Security (New York, UN Women, 2015).

<sup>47</sup> CEDAW general recommendation No. 30 (2013), para. 74.

Accordingly, attention should be given to:

- Any changes in the legislation and/or state policies or practice during the conflict/crisis, which may have led to further violations of women’s human rights, including an increase in GBV, for example, changes in legislation reinforcing tribal and religious practices with the aim to gain the support of certain groups;
- The role of the authorities, armed groups and/or religious and community leaders in exacerbating gender stereotypes and the subordination of women in society, for example by imposing strict (or stricter) codes of conduct on women or a dress code, including with the supposed intention to “protect” them;
- The fact that LGBTI persons can also face increased vulnerability and exacerbated forms of violence and discrimination in conflict or humanitarian contexts, such as IDP settlements, as protection measures and services often fail to address their situation.<sup>48</sup>

### Example

The conflict in a particular country has led to increased discrimination against women and more control over their lives – women’s movement is restricted in the north of the country. “A strict dress code has been imposed, requiring girls (from the age of 5) and women to be covered from head to toe. On buses connecting major cities, men and women are now segregated, sometimes by a curtain ... Boys and girls and men and women no longer have the right to appear in public together unless they are married or are members of the same family. Girls and women can no longer ride with men on motorcycles. Islamic police monitor the

application of these strict rules and the punishment for non-compliance is flogging. Faced with this situation, many women prefer not to go out.” (A/HRC/22/33, para. 44)

OHCHR investigations assessed how the armed conflict has increased violence and discrimination against women in another country. “Women and girls face multiple layers of discrimination and continue to suffer violations and abuses in addition to those encountered by the rest of the population. The assassinations, assaults, harassment and threats against women carried out by armed groups appear designed to send a broader message that women should not be vocal in the public sphere. Women and girls remain at risk of sexual and gender-based violence, particularly by armed groups. In several parts [...], the ability of women to exercise their fundamental rights and freedoms such as freedom of movement or the right to work, has been restricted not only as a result of the conflict, but as a result of requirements for accompaniment by ‘male guardians’. Women also continue to face specific barriers in relation to access to justice.” (A/HRC/31/CRP.3, para. 172)

“The ongoing conflict has added to the burden of womanhood, especially for survivors of sexual violence. [...] Even before the current conflict began, early marriage was a means for families to escape poverty and destitution. The ongoing conflict [...], coupled with families facing severe economic hardships, have resulted in young girls being forced into marriage. [...] Sexual and gender-based violence is not new and predates the current conflict. Crafting responses to address sexual and gender based violence in the ongoing conflict, must take into account the continuum of violence throughout the history of [the country] as well as the current conflict-related violence. In the current context women’s lives have little value resulting in extremely high levels of sexual and gender-based violence”. (A/HRC/37/CRP.2, paras. 171-175)

<sup>48</sup> See, for instance, Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, A/HRC/29/34/Add.2.



## Practical Tool No. 4

# Women's human rights concerns during peacetime and conflict

The chart below shows some illustrative examples of women's human rights concerns in peacetime and their dimensions during conflict/crisis. It can be used as a tool to analyse how pre-existing discrimination can be aggravated by conflict or crisis:<sup>49</sup>

Forms of pre-existing discrimination in law and practice	Possible concerns during conflict/crisis
<ul style="list-style-type: none"> <li>• Underrepresentation of women and lack of participation in public life and in decision-making processes (e.g. lack of participation in the formulation of government policies and programmes)</li> </ul>	<ul style="list-style-type: none"> <li>• Marginalization from participating in peace efforts, transitional justice mechanisms and reconstruction processes</li> <li>• In contexts of displacement, exclusion from participating in or leading decision-making processes in a camp setting</li> </ul>
<ul style="list-style-type: none"> <li>• Discrimination and restrictions in the exercise of the right to nationality (e.g. inability to claim citizenship and nationality-related rights due to discriminatory nationality laws) and restriction in passing on nationality to children</li> </ul>	<ul style="list-style-type: none"> <li>• Statelessness due to the inability to prove nationality; lack of legal identity, because identity documents are not issued in women's names, are lost or destroyed, or because birth registration is not accessible, has failed or is discriminatory</li> </ul>
<ul style="list-style-type: none"> <li>• Discrimination and restrictions in the exercise of the rights related to equality in marriage and family relations (e.g. violations of right to enter freely into a marriage and to freely choose a spouse and inheritance; lack of prohibition of child marriage or different minimum legal ages for marriage for boys and girls)</li> </ul>	<ul style="list-style-type: none"> <li>• Child and forced marriages as a result of poverty and/or desire or pressure supposedly intended "to protect the girl's honour"</li> <li>• Destitution following the death of male family member</li> </ul>
<ul style="list-style-type: none"> <li>• Discrimination related to right to housing, right to inheritance, right to property</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of home and income following the death or disappearance of spouse, parents or parental guardians, as a result of the human rights situation or conflict; difficulties in taking on the role of "head of the household"</li> <li>• Increased risk of exploitation and GBV, particularly in forced marriages, prostitution and trafficking (exacerbated by displacement)</li> </ul>

<sup>49</sup> For more detailed information on the implementation of human rights standards and examples of discriminatory laws and practices against women, see: CEDAW general recommendations No. 21 (1994) and No. 29 (2013) on marriage and family relations, No. 24 (1999) on women and health, No. 25 (2004) on temporary special measures, No. 28 (2010) on the core obligations of States parties, No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women; Committee on Economic, Social and Cultural Rights general comments No. 16 (2005) on equal rights of men and women and No. 20 (2009) on non-discrimination; Human Rights Committee general comments No. 18 (1989) on non-discrimination and No. 28 (2000) on equality of rights between men and women. See also thematic reports of the Working Group on the issue of discrimination against women in law and in practice, available at [www.ohchr.org/EN/Issues/Women/WGWomen/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/Annualreports.aspx).

Forms of pre-existing discrimination in law and practice	Possible concerns during conflict/crisis
<ul style="list-style-type: none"> <li>• Discrimination and restrictions in the exercise of freedom of movement (e.g. the exercise of marital power over the wife or parental power over adult daughters and legal or de facto requirements that prevent women from travelling)</li> <li>• Discrimination and restrictions on women’s rights to freedom of expression, assembly and association</li> </ul>	<ul style="list-style-type: none"> <li>• Further restrictions to freedom of movement based on additional movement restrictions or regulations imposed with respect to clothing and modesty norms, including when supposedly intended to “better protect women and girls from violence”</li> <li>• Limitations on women’s access to health care, education and employment/income-generating activities</li> <li>• Reprisals against certain groups of women, such as women’s human rights defenders, political activists and journalists – or their female partners (with further implications for other rights, such as freedom of expression, assembly and association), exacerbated by dynamics of the conflict or the human rights situation</li> </ul>
<ul style="list-style-type: none"> <li>• Discrimination and restrictions on the exercise of the right to education (e.g. preference for sending boys to school, girls dropping out of school due to poverty, child marriage and early pregnancy)</li> </ul>	<ul style="list-style-type: none"> <li>• Attacks or threats against girls and/or their teachers; dropping out of school due to insecurity or due to girls’ increased household responsibilities</li> </ul>
<ul style="list-style-type: none"> <li>• Discrimination and restrictions in the exercise of the right to health, including sexual and reproductive health and rights (e.g. denial of access to services, access to contraception, poor quality of obstetric care, unsafe abortion)</li> </ul>	<ul style="list-style-type: none"> <li>• Destruction or breakdown of health facilities and the consequent health implications for women due to shortage of medical and human resources and greater exposure to sexually transmitted diseases (STDs) and human immunodeficiency virus (HIV)-related disease</li> <li>• Deprioritizing women’s reproductive health in times of conflict, resulting in increased rates of delivery-related complications and preventable maternal mortality and morbidity</li> <li>• Lack of services for women victims and survivors of sexual violence, including emergency contraception and termination of pregnancy, HIV prevention and psychological support, including in humanitarian settings</li> </ul>

**B****GENDERED IMPACTS OF VIOLATIONS OR ABUSES**

A gender analysis should reveal the gendered and differentiated impacts on women, girls, men and boys of violations of civil, economic, political, cultural and social rights during and

as a result of conflict/crisis, as well as the differentiated impact of violations and breaches of the provisions of international humanitarian law. In conducting a gender analysis, it is important to understand how the socially constructed power relations between women and men affect the enjoyment of their human rights.

**Example**

Men and women experience detention in unique ways. A careful assessment of how a human rights concern affects women and men differently will reveal specific consequences as to how the same treatment in detention has a different impact on women. Investigations reported, for example, that the limited access to toilet facilities while in detention was disproportionately affecting women. While “[t]he men had to wait for two to three hours after asking before they were allowed to leave the pits to relieve themselves [...] it was [however] culturally too difficult for the women to seek permission to relieve themselves and they did not ask”. (A/HRC/12/48, para. 1116)

OHCHR investigations specifically documented, in addition to security threats, the particular challenges and difficulties faced by girls in relation to the enjoyment of their human rights, including the right to access to education. “Children’s access to education has been severely compromised by the conflict [...]. Numerous schools have been destroyed or damaged as a result of shelling and airstrikes. In many areas where schools remain standing and are still operating, parents report that they refrain from sending their children to school out of fear of injury to them during attacks. In some areas [...] parents described being afraid to send their girls to school out of fear of abductions. Reports [...] indicate that girls are no longer allowed to go to schools or are only permitted if wearing a full face veil. OHCHR has also received accounts of girls who were attacked and harassed by armed groups on their way to school ...” (A/HRC/31/CRP.3, paras. 281-282)

“Many [women and girls], particularly those from the more rural parts [...] have limited education, and married and had children early. Their communication with the world beyond their extended families was through their husbands or male relatives. With so many ... men killed or missing, these women’s ability to survive and thrive is limited by their lack of personal and financial independence, an issue that must be addressed. Further, discussions around accountability and reconciliation, as well as what is best for [the community], must take the views and experiences of these women and girls more clearly into account.” (A/HRC/32/CRP.2, para. 80)

Violations or abuses that appear to affect mainly men, such as enforced disappearances, torture or extrajudicial killing, can also significantly affect women and have gender-specific impacts.<sup>50</sup> The Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have recognized several gender-specific aspects of disappearances and torture.<sup>51</sup>

For instance, looking at systemic gender-based crimes of violence against women through the lens of torture, the Special Rapporteur on torture qualified the failure of States to eliminate persistent practices such as intimate partner violence, child and forced marriage, female genital mutilation and so-called “honour crimes”, as well as the failure to criminalize marital rape and repeal legislation, including laws that exculpate rapists who marry their victims, as violations of the obligation to prevent and prosecute torture and cruel, inhuman and degrading treatment or punishment.

Similarly, in its 2015 report on enforced disappearances and economic, social and cultural rights, the Working Group on Enforced or Involuntary Disappearances emphasizes that “although women and children represent a minority of the disappeared, their rights are disproportionately affected when this violation takes place”.<sup>52</sup>

Women whose husbands have disappeared are often ostracized by the community because their husbands are accused (sometimes falsely) of crimes, or because people fear associating with someone who has been the target of an enforced disappearance. Women who are forcibly disappeared can also face specific health concerns, including in relation to their sexual and reproductive health and rights if they are pregnant or may become pregnant while in detention and disappeared. When women are held in detention facilities that do not provide the required care, including in relation to their sexual and reproductive health and rights, their right to health is also violated. In these circumstances, States have the obligation to establish special protection measures for women who are detained.<sup>53</sup>

<sup>50</sup> See *In-depth study on all forms of violence against women: Report of the Secretary-General*, A/61/122/Add.1, para. 143.

<sup>51</sup> For a detailed analysis on women and enforced disappearances, see General comment on women affected by enforced disappearances adopted by the Working Group on Enforced Disappearances, A/HRC/WGEID/98/2/2013. For a detailed analysis on women and torture, see *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law to the unique experiences of women, girls, and lesbian, gay, bisexual, transgender and intersex persons*, A/HRC/31/57.

<sup>52</sup> Report of the Working Group on Enforced or Involuntary Disappearances, *Study on enforced or involuntary disappearances and economic, social and cultural rights*, A/HRC/30/38/Add.5, para. 20.

<sup>53</sup> *Ibid.*, para. 21.



.....

## Example

During raids, women who were related to men who were wanted by opposition groups have also been targeted for arbitrary arrest and detention in order to coerce male relatives to turn themselves in. (A/HRC/19/69, para. 60)

Due to unequal income opportunities, women were severely affected when male relatives had died or been injured or imprisoned in relation to the conflict, often making it impossible for them to care for their children without the support of male family members. "The detention of male family members negatively affected the well-being of the suspects' families, particularly the women and girls who were unprepared to take on the role as the head of households. As a result of cultural, economic and legal inequalities, women remain dependent on male family members." (A/HRC/29/CRP.4, para. 512)

The Commission documented and reported the consequences, including the anguish and trauma, as well as the subsequent violations inflicted on women, that followed the arbitrary detention or disappearance of their partners or male relatives accused of supporting opposition groups, which included acts of intimidation and sexual violence. "In addition to the threats received by the relatives of those disappeared, the phenomenon of the enforced disappearances has harmful consequences on the lives of the victims' relatives. Indeed, the Commission observed the particular vulnerability of women, the partners of the victims, after the enforced disappearance of male partners or relatives ... The Commission [also] observed the particular vulnerability of women to sexual violence during or following the detention, disappearance, or death of their male partners or relatives. Women were targeted, once alone and without protection, with the aim to further dishonour their male relatives, as well as their family". Women have reported to the Commission having been raped by the same groups who would have killed their husbands or relatives. [non-official translation]. (A/HRC/36/CRP.1/Rev.1, paras. 354, 355 and 460)

.....

Compilation and gender analysis of disaggregated statistics, as well as tailored interviews with the direct victims and their relatives, can be instrumental to assessing the impact of any given violation on the direct victims and on others, including relatives, who may be affected, in different ways. Violations that initially appear to be specific to males may in fact be affecting women as extensively as men.

.....

## Example

A change in tactics and an increase in aerial attacks on residential buildings was found to make women and girls "particularly vulnerable to death and injury". While the number of male casualties was higher, a more thorough gender analysis indicated that 82 per cent of the 2014 female fatalities occurred in homes, compared with 46 per cent of the male fatalities. (A/HRC/29/CRP.4, para. 244)

.....

In humanitarian contexts and fragile settings, the risk of dying in pregnancy or childbirth is twice as high as the maternal death rate in non-fragile settings. Services available in humanitarian contexts, including IDP settlements, may fall short of meeting the needs of women and adolescent girls, including life-saving emergency obstetric care. Protection mechanisms for victims and survivors of sexual violence, especially access to psychosocial support and sexual and reproductive health services, may not be available.

This can be due to limited funding as well as lack of access to or restrictions imposed on humanitarian actors that prevent delivery of these services. In some contexts, policy barriers also prevent health personnel from providing a complete range of contraceptives. Without access to comprehensive sexual and reproductive health services, including prenatal, postnatal and delivery care, access to safe abortion and contraceptive options, the lives of many women and girls living in humanitarian contexts are at considerable risk. It is critical that investigation teams effectively reflect the differentiated impact and consequences that forced displacement can have on women and girls. These resulting violations of their rights would never have taken place if they had not had to flee from violence or conflict and should be considered an integral part of the analysis of the gender impact of the violations.

## C

### THE CONNECTION BETWEEN GENDER-BASED VIOLENCE AND OTHER HUMAN RIGHTS VIOLATIONS OR ABUSES

As noted in section A, GBV may lead to additional human rights violations or abuses, including violations of the right to life and security of the person, the right to be protected from torture, and the rights to the highest attainable standard of physical and

mental health, education, work, housing and participation in public life.<sup>54</sup> GBV in conflict/crisis situations may also result in a vast range of physical and psychological consequences for victims and survivors, such as post-traumatic stress disorder (PTSD), injuries and disabilities and an increased risk of HIV infection, as well as unwanted pregnancies. The CEDAW Committee has stated that there is a strong correlation between GBV and HIV, including the deliberate transmission of HIV, used as a weapon of war, through rape.<sup>55</sup> Reports also indicate that sexual violence has been used during conflict as a strategic tool of war to humiliate the enemy, obtain information and pressure suspects to step forward.<sup>56</sup> Investigation teams should document and analyse the extent to which GBV has contributed to additional violations or abuses of human rights, including by asking relevant questions of the victims and survivors, their relatives, as well as other sources, such as medical practitioners and humanitarian workers providing aid and support, including psychosocial support, to victims and survivors. Questions could relate to the consequences and subsequent impacts of the violations on the victims, including beyond the specific physical consequences. For example, questions might be asked about the possible changes that have occurred after the violations in relation to victims' general well-being and morale, including their health, sleep and anxiety, or about the impact

<sup>54</sup> For example, sexual harassment of women's rights defenders by state and non-state actors undermines women's equal and meaningful participation in political and public life, see CEDAW general recommendation No. 30 (2013), para. 37.

<sup>55</sup> Ibid.

<sup>56</sup> Sexual violence in situations of armed conflict might be used as a tactic or weapon of war. This tactic of war refers to "acts of sexual violence that are linked with military/political objectives and that serve (or intend to serve) a strategic aim related to the conflict. This will rarely be reflected in overt orders, but may be evidenced by the fact that an armed group has a functioning chain of command and is able to restrain other offenses (like mutiny, desertion), while sexual violence is neither condemned nor punished by the military hierarchy" (UN Action Network Against Sexual Violence in Conflict, Analytical and Conceptual Framing of Conflict-related Sexual Violence, 2011, p. 2). See also Security Council resolution 1820 (2008) where the Security Council determined that, when used or commissioned as a tactic of war, sexual violence may impede the restoration of international peace and security.

on their family and intimate relationships, as well as the possible social and economic consequences that may have affected the victims and their relatives.

### Example

Violent events have resulted in a number of victims of rape or other forms of sexual violence being infected with HIV and their precise number “will probably never be determined, since many victims did not seek medical treatment and therefore were not tested”.

(S/2009/693, para. 96).

OHCHR investigations, addressing attacks and threats against human rights defenders and journalists, documented and made apparent in the report that women human rights defenders and women journalists were specifically targeted, not only in relation to their human rights activity, or to the messages they broadcast, but for the very fact of being women who are vocal in the public sphere, “noting that the intimidation and harassment is designed not only to deter their own activity, but to deter other women from being vocal in the public sphere”.

(A/HRC/31/CRP.3, paras. 231 and 243)

Similarly, violations of civil, economic, political, cultural and social rights may lead to GBV. Inequalities and discrimination in areas such as employment and access to property and other assets create economic dependency, which reduces women’s capacities to make decisions and increases their vulnerability to violence.<sup>57</sup> For example, women whose right to adequate housing is not sufficiently protected are at a greater risk of GBV as they tend to stay in

abusive relationships to avoid homelessness.<sup>58</sup>

Investigation teams are encouraged to be attentive to women’s specific vulnerability to GBV created by the denial of human rights in the situation under investigation.

### Example

“As more women assume the responsibility for feeding their families due to the dire economic and food situation, more women are traversing through and lingering in public spaces, selling and transporting their goods. The male dominated state, agents who police the marketplace, inspectors on trains and soldiers are increasingly committing acts of sexual assault on women in public spaces.”... “[D]iscrimination against women also intersects with a number of other human rights violations, placing women in positions of vulnerability. Violations of the right to food and freedom of movement have resulted in women and girls becoming vulnerable to trafficking ...”

(A/HRC/25/CRP.1, paras. 318 and 352)

Cultural, economic and legal inequalities have made women dependent on male family members for protection, income and housing. Women have been left with little choice but to comply with the wishes of the family, which has increased their risk of exploitation and SGBV. For example, “the risk of losing custody of their children on the basis of discriminatory laws allegedly forced some women widowed during last year’s hostilities to marry the brother of their deceased husband”.

(A/HRC/29/CRP.4, para. 596)

<sup>57</sup> A/61/122/Add.1, para. 86.

<sup>58</sup> *Women’s Rights are Human Rights* (United Nations, Sales No. E.14.XIV.5), p. 33.

## D

## INTERSECTING FORMS OF DISCRIMINATION

Women, men and others may be subjected to intersecting forms of discrimination based on, inter alia, sex, age, race, ethnicity, national origin, sexual orientation, gender identity and class.<sup>59</sup> For example, during and after conflict, specific groups of women and girls are at particular risk of violence, such as internally displaced and refugee women, women’s human rights defenders, women belonging to diverse caste, ethnic, national, religious and other minorities that are often attacked as symbolic representatives of their community, widows and women with disability. Female combatants and women in the military are also vulnerable to sexual assault and harassment by state and non-state armed groups,<sup>60</sup> as was witnessed in the Rwandan genocide, where gender-based propaganda incited the rape of Tutsi women. The team must analyse how different grounds for discrimination can result in – or compound the impact of – specific violations.

## Example

The Secretary-General has reported on cases where conflict-related SGBV was directed against women and girls from economically and socially disadvantaged backgrounds. (S/2014/181, para. 33)

“According to some testimony, rapes were committed on ethnic grounds, especially during the offensives of some armed groups. The victims are usually ‘dark-skinned’ people, who are considered inferior by their ‘fair-skinned’ assailants.” (A/HRC/22/33, para. 32)

“Repatriated women who are pregnant are regularly subjected to forced abortions, and babies born to repatriated women are often killed. These practices are driven by racist attitudes towards interracial children ... and the intent to punish further women who have left the country ...” (A/HRC/25/63, para. 42)

<sup>59</sup> OHCHR (2011), Chapter 15, p. 6.

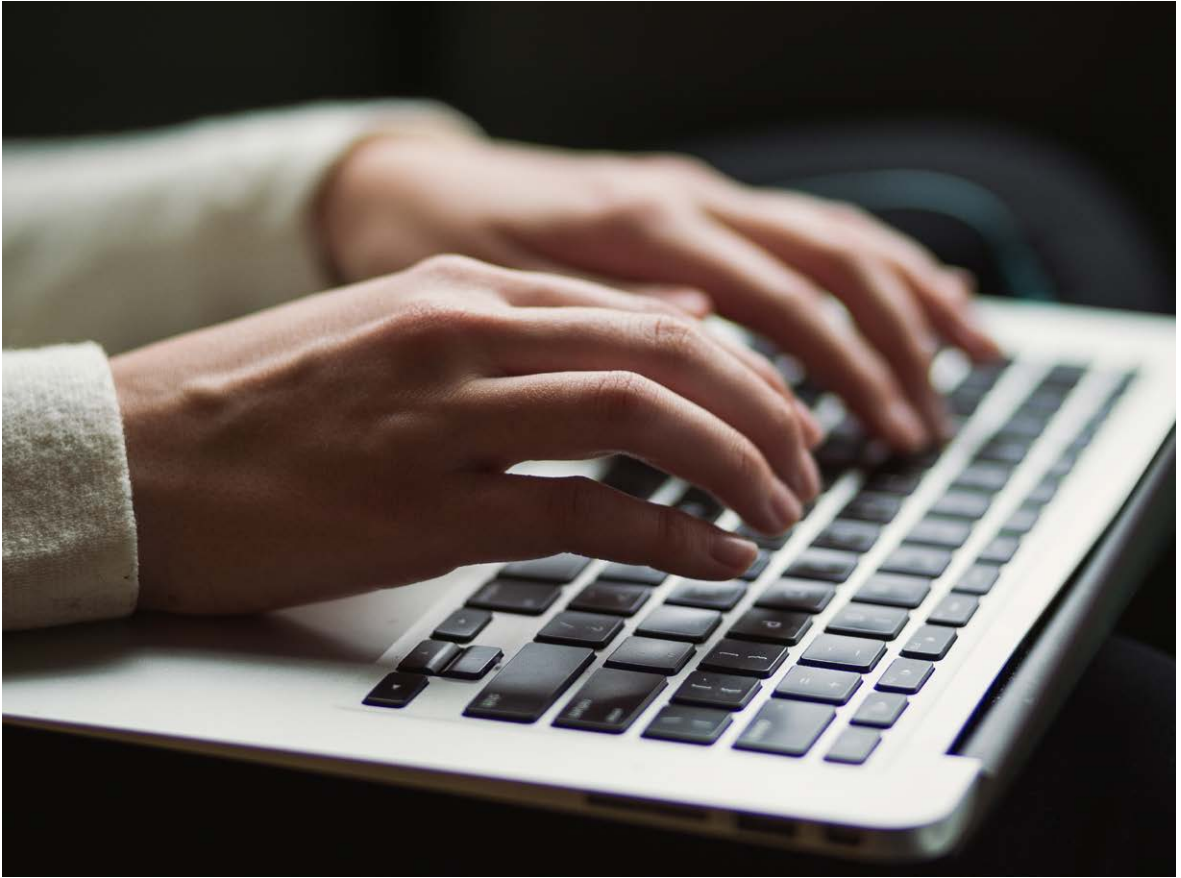
<sup>60</sup> CEDAW general recommendation No. 30 (2013), para. 36.



## CHECKLIST FOR EVALUATION AND ANALYSIS OF INFORMATION

- ☑ Understand and be guided by the international legal framework, as well as relevant regional instruments that prohibit discrimination and guarantee women and men equality in the enjoyment of their human rights.
- ☑ Be aware of specific standards applying to women (e.g. the Bangkok Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders or standards relating to maternal mortality and morbidity).
- ☑ Pay attention to all types of violations of women's rights. Pay attention not only to sexual violence but also to other forms of GBV and other violations to which women are exposed. Acknowledge that a gender analysis includes addressing the differentiated impact of violations, including violations of civil, economic, political, cultural and social rights in the private and public spheres and in humanitarian settings.
- ☑ Use the contextual information gathered in the preparation phase to understand the underlying causes and manifestations of discrimination against women and LGBTI persons and their repercussions for issues being investigated.
- ☑ Take note of discriminatory legal provisions and how they may lead to or compound different forms of SGBV and other violations of women's rights. Examples include provisions in the Criminal Code allowing for the defence of "honour" to be invoked as a mitigating circumstance in murder cases, the lack of legal provisions prohibiting child and forced marriage, regulations on clothing to be worn by women in public, restrictions to women's freedom of movement and punishments imposed to enforce such regulations, among others.
- ☑ Analyse different types of violations with the aim to establish gender-specific patterns, including trends in SGBV; identify the gender-specific consequences of the violations and their root causes.
- ☑ Examine whether existing gender inequalities have been exacerbated and/or have placed women at a heightened risk of different forms of human rights violations, including SGBV. Keep in mind that new patterns of discrimination against women and LGBTI persons may emerge due to the conflict/crisis.
- ☑ Analyse whether the denial of civil, economic, political, cultural and social rights has increased the vulnerability of women to human rights violations or abuses in the situation under investigation and whether SGBV has contributed to additional violations or abuses of human rights.
- ☑ Note intersecting forms of discrimination that place specific groups of women, girls, men and boys at heightened risk of certain violations.

# IV Reporting



## Report writing

The reports on the outcome, findings and conclusions of the human rights investigation should illustrate the particular experiences of women and men, as well as specific instances and larger systematic patterns of discrimination and oppression. Accordingly, reports should use a gender-sensitive approach throughout, including in the recommendations. Gender-sensitive report writing does not simply refer to the choice of language or disaggregated data, but also relates to the report's content, structure and focus. This chapter will build on the guidance provided in the previous chapters and present aspects to consider when drafting a gender-sensitive report.

### A

#### INTEGRATING GENDER THROUGHOUT THE REPORT

While each investigation mandate is different, and structure and emphasis will vary, gender-specific concerns should be addressed both in standalone sections and throughout the report. The responsibility of integrating a gender perspective falls on the whole team. When Gender Advisers are part of the team, they have the primary responsibility to provide advice and inputs on all sections of the report in order to ensure the consistent integration of a gender perspective. Addressing women's concerns in each section, including the background/context, methodology, legal analysis, findings and recommendations, allows for the proper representation of the experiences of the entire population. As stressed above, disaggregated data is particularly important in this regard, but is only one element that allows a gender analysis to be undertaken.



The report should address any possible gaps in information and/or challenges to obtaining information due to gender dynamics and gender-based discrimination, in order not to present a distorted image of the reality.<sup>61</sup>

The inclusion of background information, and the contextualization of the situation of women, men and others, can support arguments related to violations of women's rights and gendered consequences of violations.

### Example

An assessment of an investigation's approach to gender has been included in the methodology section of its report. "In accordance with best practices, [the Commission] paid special attention to gender issues and the gendered impact of violations. Nevertheless, it faced significant difficulties in the investigation and documentation of human rights violations suffered by women. The commission therefore takes the view that its inquiry may have only partially captured the extent of sexual violence and violence against women." (A/HRC/29/42, para. 14)

Obstacles to collecting information on SGBV have also been included in the methodology section. "When trying to collect further evidence on rape perpetrated against men and boys, the Commission faced particular difficulties in collecting first-hand accounts, although expert witnesses working with survivors of such violence confirmed the existence of sexual violence against men ..." (A/HRC/32/CRP.1, para. 27)

Possible gaps in information have been addressed along with the description of the findings. "Defectors from the military and the security forces indicated that they had been present in places of detention where women were sexually assaulted; the commission, however, received limited evidence to that effect. This may be due in part to the stigma that victims would endure if they came forward." (A/HRC/S-17/2/Add.1, para. 68)

### Example

A gender perspective has been integrated into the historical background section of the report. "[The organization] openly noted that one of its main goals was to liberate women from the inferior status conferred on them by traditional laws and customs. The land reform policy adopted during this time saw the redistribution of land to the landless and poor peasants, enabling women for the first time in history to own property ... At the second regular meeting ... polygamy was abolished and a law stipulating that marriage must be with the consent of both man and woman implemented." (A/HRC/29/CRP.1, para. 89)

Background information on discrimination against women has been integrated into the principal findings and conclusions. "As a result of fixed gender roles and prevailing cultural norms ... women's lives are centred around the home and their presence in the public sphere is limited. The challenges women face in relation to home demolitions are exacerbated by discrimination within the society itself, including difficulties securing tenure and managing and accessing property and other assets." (A/HRC/29/CRP.4, para. 527)

Some reports have included specific sections on the status on women and girls in society, under substantive sections presenting the findings and analysing the specific human rights violations. (e.g. A/HRC/37/CRP.2, paras. 164-174)

Several team members are usually involved in the drafting of the report. The team should make sure that the gender analysis is coherent

<sup>61</sup> Kenney, "Developing a gender methodology for U.N. commissions of inquiry", p. 606.

throughout the different sections of the report, avoiding inconsistencies and contradictions. For example, if information related to violations of women’s human rights is presented in the background information section, it must also be addressed in the findings section. The legal analysis should include findings on the specific provisions of international law that have been breached, considering the entire applicable legal framework relevant for the investigation, including the relevant international human rights and humanitarian legal framework and international criminal law, if pertinent to the mandate. In doing so, gender equality standards should not be overlooked.<sup>62</sup>

### Example

Several CoIs/FFMs have included gender-sensitive legal analysis of human rights violations, violations and breaches of international humanitarian law and international crimes, which, depending on the circumstances, could constitute war crimes, crimes against humanity or acts of genocide. These have included, for instance, cases of rape against women, girls and men, forced marriage of women and girls, sexual slavery and other forms of sexual violence, as well as the execution of homosexuals and of women, men and children accused of adultery. (e.g. A/HRC/32/CRP.2; A/HRC/37/CRP.3)

Photographs may be used for advocacy and dissemination purposes, giving due respect to issues of consent, confidentiality and protection concerns. These should reflect the experiences of both men and women and should not limit women’s experience to experience of sexual violence.

## B

### USING GENDER-SENSITIVE LANGUAGE

Using gender-sensitive language and disaggregated data is an important step towards achieving gender equality. It helps to avoid a style of writing that “erases” women and omits phrases that reaffirm and perpetuate harmful gender stereotypes.<sup>63</sup> Reports should avoid language that subsumes women to homogenous categories as “a group”, when in fact they represent half of the world population, or that include women and children in the same group. Stereotyping attributes are also common, for example reports should avoid portraying only men as leaders and women as followers, or men as active and women as passive and “vulnerable”. Women and girls are not intrinsically vulnerable or victims by nature. This stereotypical language denies women and girls’ agency, depicting them as weak and passive bystanders of conflict and agentless victims, and builds a distorted, male-dominated narrative that contributes to women and girls’ exclusion from decision-making, transitional justice, peace-building and reconciliation efforts.

For example:

- Always use available disaggregated data on age and sex (e.g. instead of saying “five journalists were arbitrarily detained”, use “three female and two male journalists were arbitrarily detained”; instead of saying “twenty-four persons, including two women and two children”, use “twenty men, two women, one boy and one girl”).
- It is particularly important to avoid referring specifically to women when speaking only about certain violations (e.g. sexual violence), while using gender-neutral nouns when reporting on others (e.g. killings, torture, disappearances).

<sup>62</sup> For more information, see CEDAW general recommendation No. 30 (2013).

<sup>63</sup> For more information on gender-sensitive language, see United Nations, [Gender Sensitive Language: Guidelines](#).

- Instead of using masculine pronouns in situations where the gender of their subject(s) is unclear or variable, use the plural, “he/she” or, when possible, rephrase and omit the pronoun.
- Avoid using gendered nouns, such as “mankind”, replacing them for example, with “people” or “men and women”.
- Women and men are often associated with certain professions and other stereotyped roles. Words such as “housewife” and “policeman” should be replaced with “homemaker” and “police officer”.
- Avoid terms that are derogatory towards women or reinforce harmful stereotypes.



### Example

“Women were drawn to the cause of ... liberation from the beginning ... [They] became involved resisting the occupation through activities such as cooking to nursing, weapon collection to message transmission. Although not easily welcomed ..., women’s ability to evade ... scrutiny and complete important clandestine tasks was of great value” (A/HRC/29/CRP.1, para. 79)



## C PRIORITIZING GENDER-SPECIFIC VIOLATIONS AND CONCERNS WITHIN THE REPORT

Topics or incidents connected to gender-related issues might be dropped due to time constraints, word counts and limited resources. Investigation teams will most likely need to prioritize the most pressing issues to include in their gender analysis. Gender Advisors, when part of the team, can be instrumental in providing support and advice in this exercise. All efforts should be made to include key gender issues in the report itself, as well as in its summary. The analysis that reveals the differential impact on men and women of the violations suffered should

be considered an integral part of the scope of the investigation and mandate and should be reflected among the findings and conclusions of the report. Moreover, considering that the report is likely to serve as the basis for follow-up actions, this gender-specific analysis is instrumental in supporting efforts and tailored initiatives aimed at promoting victims’ access to justice and effective remedies.

## D DRAFTING RECOMMENDATIONS

The findings of the report related to gendered violations or gender-specific impacts should be addressed in the recommendations, in order to promote equal and inclusive accountability and redress.

Some of the more relevant recommendations may relate to:

- Changes in laws, policies and institutions that could prevent systemic and structural discrimination against persons on the basis of gender or sex. For example:
  - The repeal/revision of discriminatory provisions in the legislation;
  - The ratification of all international instruments relevant to the protection of women’s and girls’ rights;
  - The adoption of measures to ensure the integrity of the judicial system and the handling of sexual violence cases: training and strengthening the capacity of security, medical and judicial personnel to collect and preserve forensic evidence related to sexual violence;
- Changes in legislation and practice to address and compensate for the differentiated impact of human rights violations on women and girls, and, when relevant, stop continuing violations;
- The adoption of temporary special measures to ensure that women are provided with opportunities to participate in post-conflict reconstruction, for example, measures that

promote women's equal representation in political and public life and their participation in constitutional and legislative reform,<sup>64</sup> addressing specific barriers to women's equal participation linked to restrictions on mobility, security and technical skills;<sup>65</sup>

- Services/protection measures provided to victims and survivors of SGBV. This may include:
  - Establishing services for victims, such as counselling and rehabilitation, including in humanitarian settings;
  - Establishing mechanisms to enhance access to justice, including legal assistance to file complaints and seek reparations;
  - The adoption of gender-sensitive measures to avoid reprisals and stigmatization of victims and survivors of sexual violence and other forms of SGBV and ensure access to justice. This would include the establishment of special protection units and gender desks in police stations, etc.;
  - The development and implementation of programmes to provide victims and survivors with economic and social empowerment and reintegration services;
- The importance of excluding perpetrators of sexual violence from amnesty programmes;
- Reparations that are gender sensitive and transformative in impact. This means that they should strive to transform the context of inequality and oppression that enabled violations to occur;<sup>66</sup>
- Accountability measures, such as ensuring the independent and impartial investigation of violations of women's and girls' rights,

free from gender stereotypes, and the prosecution and commensurate punishment of perpetrators in accordance with international law;

- Support for monitoring and awareness-raising mechanisms, including, for example, the allocation of adequate resources in order to address the impact of SGBV on women's and girls' sexual and reproductive health, including pregnancy and the transmission of STDs and HIV-related disease;
- Women's participation in peace negotiations, transitional justice mechanisms and reconstruction processes. This includes, for example, recommendations aimed at promoting adequate representation of women in relevant mechanisms to achieve reconciliation and accountability for human rights violations. It also entails equal access and participation by women and men during all stages of conflict prevention efforts, post-conflict transition and reconstruction processes.

### Example

It has been recommended, for example, that [the Government] organize campaigns to raise awareness of human rights and violence against women and children and that the international community establish a mechanism for monitoring, analysing and reporting sexual violence related to conflict and deploy specialists to protect women and children, as prescribed by Security Council resolutions 1612 (2005) and 1960 (2010). (A/HRC/22/33, para. 70)

"Ensure that national laws and policies comply with the State's international human rights obligations and are non-discriminatory by, inter alia, permitting prosecution of marital rape in all circumstances and abolishing legal provisions criminalizing consensual same-sex sexual activity." (A/HRC/32/CRP.1, para. 354 (f))

<sup>64</sup> CEDAW Committee general recommendation No. 30 (2013), para. 72.

<sup>65</sup> *Ibid.*, para. 44.

<sup>66</sup> It is particularly important that victims are consulted in order that their views on the specific nature of reparations are heard. See [Guidance Note of the Secretary-General: Reparations for Conflict-related Sexual Violence](#), June 2014. See also OHCHR, *Rule-of-Law Tools for Post-conflict States: Reparations Programmes* (United Nations publication, Sales No. E.08.XIV.3).

“Adopt legal reforms to combat sexual and gender-based violence by introducing new criminal offences and increased penalties, and expand the scope of protection of and support for victims of sexual and gender-based violence.” (A/HRC/24/59, para. 95 (h))

“The Commission of Inquiry recommends that the Government: (a) Strengthen legislation protecting and promoting the equality of women ...; (b) Ratify the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; (c) Permit the creation of independent gender-specific civil society organizations, which are necessary to increase women’s involvement in public life and decision-making; (d) Ensure that women have access to productive land, agricultural training and the means required to make their farming sustainable and productive; (e) Ensure that all women and girls enjoy equal inheritance rights and are protected by the same legal standards; (f) Investigate, prosecute and sentence offenders of sexual and gender-based violence ...” (A/HRC/29/CRP.1, para. 1534)

## E CHECKLIST



### CHECKLIST FOR REPORT WRITING

- Integrate gender throughout the chapters of the report; gender analysis should not be an occasional add-on, or the subject of an occasional paragraph, but, rather, a core part of the report.
- Ensure that gender-sensitive language is applied consistently throughout the report.
- Use age and sex gender-disaggregated data and avoid gender-neutral terms that could hide the experiences/roles of women.
- Use the checklist provided in Chapter 15 of the *Manual on Human Rights Monitoring to integrate gender into reports*.<sup>67</sup>
- Acknowledge that “gender” implies more than women’s issues and sexual violence.
- Prioritize issues to be included in the report while keeping in mind the most serious gender-based violations/impacts.
- Include background information in the report and contextualize the situations of women and men.
- Include a gender perspective when analysing a pattern of human rights violations, such as multiple or intersectional and/or compounded discrimination.
- Ensure that the international human rights legal framework is used along with international humanitarian and international criminal law, when applicable, in the legal analysis of the report, fully reflecting the gender-specific impacts and human rights violations that occurred during the situation under investigation.
- Pay attention to consistency between the findings and the recommendations, making sure that relevant gender-specific findings and conclusions on gendered violations are accompanied by tailored recommendations.
- Ensure that the report includes relevant recommendations that will contribute to ensuring respect for women’s human rights and the enhancement of women’s status and security.

<sup>67</sup> OHCHR (2011), Chapter 15.

## Presentation of the report and sharing gender-related findings

In many instances, reports produced by investigation teams are meant to be public. In the case of CoIs/FFMs, these are presented to the HRC or other mandating entities. In order for the report to receive media attention, investigation teams should work with communications sections well in advance of the intended date of publication, for example, to tailor the messages to be conveyed and identify outlets for its dissemination, in line with the media and outreach strategy developed during the planning phase. Discussions on whether to launch the report at the country and/or global level should also be held.<sup>68</sup> United Nations senior staff or Experts/Commissioners presenting the report should be prepared to respond to any questions related to women's rights and gender issues during the public presentation with the media present or in the interactive dialogue that takes place at the HRC.

A short brief, including a summary of the gender-related findings in the report, might be useful in this regard. To ensure that the gender-related findings in the report have adequate visibility, it could be relevant to consider preparing outreach materials, such as specific Q&As, information sheets and infographics. Gender Advisers, when part of the team, should be involved in the preparation for presentation of the report to the HRC and, when pertinent, in interaction with the public, other audience or the media. Some CoIs/FFMs have organized side events or thematic presentations addressing

the specifically gender-related aspects of their report's findings and conclusions.

Reports will only trigger responses if they are followed up with a range of stakeholders at different levels (e.g. government authorities at the national and local levels, non-state actors) by Human Rights Officers, who should see their role not only as investigators but also as facilitators of change.<sup>69</sup>

Following the launch of the report, the information collected by the CoI/FFM will normally be handed over to OHCHR, which acts as its "custodian". Materials will be archived according to United Nations policy.<sup>70</sup> The information should already have been entered into the database in order to ensure that it is not lost, but, rather, is stored and remains available (e.g. for future judicial investigations/proceedings, if informed consent has been given by the victims and sources). Information, documents and briefing papers containing analysis of gender dimensions of the violations and cases, should be stored and labelled in such a way as will ease their future access and allow searches.

<sup>68</sup> See OHCHR, United Nations Department of Political Affairs (DPA) and Department of Peacekeeping Operations (DPKO), *Public Reporting on Human Rights by United Nations Peace Operations: Good Practices, Lessons Learned and Challenges* (2017), pp. 34-35. NB. This is an internal document, accessible to United Nations staff.

<sup>69</sup> *Ibid.*, p. 36.

<sup>70</sup> Applicable standard operating procedures (SOPs) include the OHCHR Standard Operating Procedures on Access to Classified Records and Declassification, OHCHR/PSMS/01/16 (forthcoming). See also Secretary-General's bulletin: Record-keeping and the management of United Nations archives (ST/SGB/2007/5) and Secretary-General's bulletin: Information sensitivity, classification and handling (ST/SGB/2007/6).





# VI Remarks

## CONCLUDING REMARKS

The integration of a gender perspective into human rights investigations is critical to ensuring high quality analysis that accurately depicts the different human rights violations, including by revealing underlying gender-based discrimination and violence. A gender analysis is fundamental to understanding the differentiated impact that certain human rights situations or crises have on women, men, girls and boys, as well as on LGBTI persons or persons with non-binary gender identities, including the possible exacerbation of pre-existing forms of GBV and discrimination. A gender-sensitive analysis is therefore instrumental to tailoring specific

and action-oriented recommendations on the responses that are needed to address human rights violations, protect victims' rights and contribute to the prevention and non-recurrence of such violations.

Gender-sensitive methodologies and the integration of a gender perspective into investigations and reporting by investigative teams and CoIs/FFMs contribute to strengthening a victim-centred approach, by acknowledging and making visible the experiences of women and girls and other marginalized populations, including LGBTI persons, and breaking down narratives that reduce them to passive victims or bystanders, while reinforcing their agency and promoting their participation in sustaining peace and democracy.



## LIST OF REPORTS

**A/HRC/12/48** Human rights in Palestine and other occupied Arab territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 24 September 2009

**A/HRC/S-17/2/Add.1** Report of the independent international commission of inquiry on the Syrian Arab Republic, 23 November 2011

**A/HRC/17/44** Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, 12 January 2012

**A/HRC/19/69** Report of the independent international commission of inquiry on the Syrian Arab Republic, 22 February 2012

**A/HRC/22/33** Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali, 7 January 2013

**A/HRC/24/59** Situation of human rights in the Central African Republic, Report of the United Nations High Commissioner for Human Rights, 12 September 2013

**A/HRC/25/65** Report of the independent international commission of inquiry on the Syrian Arab Republic, 12 February 2014

**A/HRC/25/63** Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea, 7 February 2014

**A/HRC/25/CRP.1** Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea, 7 February 2014

**A/HRC/29/42** Report of the commission of inquiry on human rights in Eritrea, 4 June 2015

**A/HRC/29/CRP.1** Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, 5 June 2015

**A/HRC/29/CRP.4** Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, 24 June 2015\*

**A/HRC/31/CRP.3** Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings, 23 February 2016

**A/HRC/32/CRP.1** Detailed findings of the commission of inquiry on human rights in Eritrea, 8 June 2016

**A/HRC/32/CRP.2** "They came to destroy": ISIS Crimes Against the Yazidis, report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 15 June 2016

**A/HRC/36/CRP.1/Rev.1** Rapport final détaillé de la Commission d'enquête sur le Burundi, 29 septembre 2017 (French only)

**A/HRC/37/CRP.2** Report of the Commission on Human Rights in South Sudan, 23 February 2018

**S/2009/693** Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea, 18 December 2009

**S/2014/181** Conflict-related sexual violence: Report of the Secretary-General, 13 March 2014

**\*S-21/1** Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem, Resolution adopted by the Human Rights Council, 24 July 2014

*This is a selected list of reports, the content of which is illustrative for the purpose of the present publication and does not represent an exhaustive list of all United Nations official reports that integrate a gender perspective. The quotes included in the present publication are intended to illustrate relevant methodological and substantive aspects, and not to present or highlight specific country situations.*











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